



# North Carolina Real Estate License Law and Commission Rules

*(Also including the License Law and Rules Comments)*

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# NORTH CAROLINA REAL ESTATE LICENSE LAW

Codified as Chapter 93A of the General Statutes of North Carolina

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**Please note: Certain "gender neutral" terms used in the Real Estate License Law as reprinted in this booklet are subject to final revision by the Revisor of Statutes.**

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# Real Estate License Law

[Codified as Chapter 93A of the General Statutes of North Carolina]

## ARTICLE 1. REAL ESTATE BROKERS.

### § 93A-1. License required of real estate brokers.

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate broker, or directly or indirectly to engage or assume to engage in the business of real estate broker or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker in this State.

### § 93A-2. Definitions and exceptions.

- (a) A real estate broker within the meaning of this Chapter is any person, partnership, corporation, limited liability company, association, or other business entity who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others.
- (a1) The term broker-in-charge within the meaning of this Chapter means a real estate broker who has been designated as the broker having responsibility for the supervision of brokers on provisional status engaged in real estate brokerage at a particular real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule.
- (a2) The term provisional broker within the meaning of this Chapter means a real estate broker who, pending acquisition and documentation to the Commission of the education or experience prescribed by either G.S. 93A-4(a1) or G.S. 93A-4.3, must be supervised by a broker-in-charge when performing any act for which a real estate license is required.
- (b) The term real estate salesperson within the meaning of this Chapter shall mean and include any person who was formerly licensed by the Commission as a real estate salesperson before April 1, 2006.
- (c) The provisions of G.S. 93A-1 and G.S. 93A-2 do not apply to and do not include:

- (1) Any partnership, corporation, limited liability company, association, or other business entity that, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein. The exemption from licensure under this subsection shall extend to the following persons when those persons are engaged in acts or services for which the corporation, partnership, limited liability company, or other business entity would be exempt hereunder:
- a. The officers and employees whose income is reported on IRS Form W-2 of an exempt corporation.
  - b. The general partners and employees whose income is reported on IRS Form W-2 of an exempt partnership.
  - c. The managers, member-managers, and employees whose income is reported on IRS Form W-2 of an exempt limited liability company.
  - d. The natural person owners of an exempt closely held business entity. For purposes of this subdivision, a closely held business entity is a limited liability company or a corporation, neither having more than two legal owners, at least one of whom is a natural person.
  - e. The officers, managers, member-managers, and employees whose income is reported on IRS Form W-2 of a closely held business entity when acting as an agent for an exempt business entity if the closely held business entity is owned by a natural person either (i) owning fifty percent (50%) or more ownership interest in the closely held business entity and the exempt business entity or (ii) owning fifty percent (50%) or more of a closely held business entity that owns a fifty percent (50%) or more ownership interest in the exempt business entity. The closely held business entity acting as an agent under this subdivision must file an annual written notice with the Secretary of State, including its legal name and physical address. The exemption authorized by this sub-subdivision is only effective if, immediately following the completion of the transaction for which the exemption is claimed, the closely held business entity has a net worth that equals or exceeds the value of the transaction.

When a person conducts a real estate transaction pursuant to an exemption under this subdivision, the person shall disclose, in writing, to all parties to the transaction (i) that the person is not licensed as a real estate broker or sales person under Article 1 of this Chapter, (ii) the specific exemption under this subdivision that applies, and (iii) the legal name and physical address of the owner of the subject property and of the closely held business entity acting under sub-subdivision e. of this subdivision, if applicable. This disclosure may be included on the face of a lease or contract executed in compliance with an exemption under this subdivision.

- (2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real estate.
- (3) Acts or services performed by an attorney who is an active member of the North Carolina State Bar if the acts and services constitute the practice of law under Chapter 84 of the General Statutes.
- (4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any court.
- (5) Any person, while acting as a trustee under a written trust agreement, deed of trust or will, or that person's regular salaried employees. The trust agreement, deed of trust, or will must specifically identify the trustee, the beneficiary, the corpus of trust, and the trustee's authority over the corpus.
- (6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee's employment is limited to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or broker. However, in a vacation rental transaction as defined by G.S. 42A-4(6), the employee may offer a prospective tenant a rental price and term from a schedule setting forth prices and terms and the conditions and limitations under which they may be offered. The schedule shall be written and provided by the employee's employing broker with the written authority of the landlord.

- (7) Any individual owner who personally leases or sells the owner's own property.
- (8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried employees of the housing authority when performing acts authorized in this Chapter with regard to the sale or lease of property owned by the housing authority or the subletting of property which the housing authority holds as tenant. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority.

**§ 93A-3. Commission created; compensation; organization.**

- (a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate brokers. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122.
- (b) The provisions of G.S. 93B-5 notwithstanding, members of the Commission shall receive as compensation for each day spent on work for the Commission a per diem in an amount established by the Commission by rule, and mileage reimbursement for transportation by privately owned automobile at the business standard mileage rate set by the Internal Revenue Service per mile of travel along with actual cost of tolls paid. The total expense of the administration of this Chapter shall not exceed the total income therefrom; and none of the expenses of said Commission or the compensation or expenses of any of-

fice thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Commission nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the State of North Carolina. After all expenses of operation, the Commission may set aside an expense reserve each year. The Commission may deposit moneys in accounts, certificates of deposit, or time deposits as the Commission may approve, in any bank, savings and loan association, or trust company. Moneys also may be invested in the same classes of securities referenced in G.S. 159-30(c).

- (c) The Commission shall have power to make reasonable bylaws, rules and regulations that are not inconsistent with the provisions of this Chapter and the General Statutes; provided, however, the Commission shall not make rules or regulations regulating commissions, salaries, or fees to be charged by licensees under this Chapter.
- (c1) The provisions of G.S. 93A-1 and G.S. 93A-2 notwithstanding, the Commission may adopt rules to permit a real estate broker to pay a fee or other valuable consideration to a travel agent for the introduction or procurement of tenants or potential tenants in vacation rentals as defined in G.S. 42A-4. Rules adopted pursuant to this subsection may include a definition of the term "travel agent", may regulate the conduct of permitted transactions, and may limit the amount of the fee or the value of the consideration that may be paid to the travel agent. However, the Commission may not authorize a person or entity not licensed as a broker to negotiate any real estate transaction on behalf of another.
- (c2) The Commission shall adopt a seal for its use, which shall bear thereon the words "North Carolina Real Estate Commission." Copies of all records and papers in the office of the Commission duly certified and authenticated by the seal of the Commission shall be received in evidence in all courts and with like effect as the originals.
- (d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission shall reimburse its employees for travel on official business. Mileage expenses for transportation by privately owned automobile shall be reimbursed at the business standard mileage set by the Internal Revenue Service per mile of travel along with the actual tolls paid. Other travel expenses shall be reimbursed in accordance with G.S. 138-6. The Commission may, when it deems it necessary or convenient, delegate to the Ex-

ecutive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b).

- (e) The Commission shall be entitled to the services of the Attorney General of North Carolina, in connection with the affairs of the Commission, and may, with the approval of the Attorney General, employ attorneys to represent the Commission or assist it in the enforcement of this Chapter. The Commission may prefer a complaint for violation of this Chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal offices of the State to enforce the provisions of this Chapter and collect the penalties provided therein.
- (f) The Commission is authorized to acquire, hold, convey, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The rents, proceeds, and other revenues and benefits of the ownership of real property shall inure to the Commission. Collateral pledged by the Commission for any encumbrance of real property shall be limited to the assets, income, and revenues of the Commission. Leases, deeds, and other instruments relating to the Commission's interest in real property shall be valid when executed by the executive director of the Commission. The Commission may create and conduct education and information programs relating to the real estate business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, seminars, and lectures. The Commission may claim the copyright to written materials it creates and may charge fees for publications and programs.

**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

- (a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker shall be at least 18 years of age. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily

completed, through a real estate education provider certified by the Commission, an education program consisting of at least 75 hours of instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker shall be required to pay a fee. The application fee shall be one hundred dollars (\$100.00) unless the Commission sets the fee at a higher amount by rule; however, the Commission shall not set a fee that exceeds one hundred twenty dollars (\$120.00). The application fee shall not increase by more than five dollars (\$5.00) during a 12-month period.

- (a1) Each person who is issued a real estate broker license on or after April 1, 2006, shall initially be classified as a provisional broker and shall, within 18 months following initial licensure, satisfactorily complete, through a real estate education provider certified by the Commission, a postlicensing education program consisting of 90 hours of instruction in subjects determined by the Commission or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. The Commission may, by rule, establish a schedule for completion of the prescribed postlicensing education that requires provisional brokers to complete portions of the 90-hour postlicensing education program in less than 18 months, and provisional brokers must comply with this schedule in order to be entitled to actively engage in real estate brokerage. Upon completion of the postlicensing education program, the provisional status of the broker's license shall be terminated. When a provisional broker fails to complete all 90 hours of required postlicensing education within 18 months following initial licensure, the broker's license shall be placed on inactive status. The broker's license shall not be returned to active status until he or she has satisfied such requirements as the Commission may by rule require. Every license cancelled after April 1, 2009, because the licensee failed to complete postlicensing education shall be reinstated on inactive status until such time as the licensee satisfies the requirements for returning to active status as the Commission may by rule require.
- (a2) A certified real estate education provider shall pay a fee of ten dollars (\$10.00) per licensee to the Commission for each licensee completing a postlicensing education course conducted by the school, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.
- (b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker shall

be required to take an examination. The examination may be administered orally, by computer, or by any other method the Commission deems appropriate. The Commission may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of the examination and its administration. The cost of the examination and its administration shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the real estate brokerage business. The Commission may investigate the moral character and fitness, including the mental and emotional fitness, of each applicant for licensure as the applicant's character and fitness may generally relate to the real estate brokerage business, the public interest, and the public's confidence in the real estate brokerage business. The Commission may also require an applicant to provide the Commission with a criminal record report. All applicants shall obtain criminal record reports from one or more reporting services designated by the Commission to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports. Criminal record reports, credit reports, and reports relating to an applicant's mental and emotional fitness obtained in connection with the application process shall not be considered public records under Chapter 132 of the General Statutes. If the results of any required competency examination and investigation of the applicant's moral character and fitness shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker in the State of North Carolina, upon the payment of any privilege taxes required by law.

Notwithstanding G.S. 150B-38(c), in a contested case commenced upon the request of a party applying for licensure regarding the question of the moral character or fitness of the applicant, if notice has been reasonably attempted, but cannot be given to the applicant

personally or by certified mail in accordance with G.S. 150B-38(c), the notice of hearing shall be deemed given to the applicant when a copy of the notice is deposited in an official depository of the United States Postal Service addressed to the applicant at the latest mailing address provided by the applicant to the Commission or by any other means reasonably designed to achieve actual notice to the applicant.

- (b1) The Department of Public Safety may provide a criminal record check to the Commission for a person who has applied for a license through the Commission. The Commission shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

- (b2) Records, papers, and other documentation containing personal information collected or compiled by the Commission in connection with an application for examination, licensure, certification, or renewal or reinstatement, or the subsequent update of information shall not be considered public records within the meaning of Chapter 132 of the General Statutes unless admitted into evidence in a hearing held by the Commission.
- (c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee shall be forty-five dollars (\$45.00) unless the Commission sets the fee at a higher amount by rule; however the Commission shall not set the license renewal fee at an amount that exceeds sixty dollars (\$60.00). The license renewal fee may not increase by more than five dollars (\$5.00) during a 12-month

period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. The fee for reinstatement of an expired, revoked, or suspended license shall be an amount equal to two times the license renewal fee at the time the application for reinstatement is submitted. In the event a licensee fails to obtain a reinstatement of such license within six months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars (\$5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars (\$10.00).

- (d) The Commission is expressly vested with the power and authority to make and enforce any and all reasonable rules and regulations connected with license application, examination, renewal, and reinstatement as shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules and regulations necessary for the certification of real estate education providers, instructors, and textbooks and rules that prescribe specific requirements pertaining to instruction, administration, and content of required education courses and programs.
- (e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section.

#### **§ 93A-4.1. is repealed.**

#### **§ 93A-4.2. Broker-in-charge qualification.**

To be qualified to serve as a broker-in-charge of a real estate office, a real estate broker shall possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience and shall complete, within a time prescribed by the Commission, an education program prescribed by the Commission for brokers-in-charge not to exceed 12 hours of instruction. A provisional broker may not be designated as a broker-in-charge.

**§ 93A-4.3. Elimination of salesperson license; conversion of salesperson licenses to broker licenses.**

- (a) Effective April 1, 2006, the Commission shall discontinue issuing real estate salesperson licenses. Also effective April 1, 2006, all salesperson licenses shall become broker licenses, and each person holding a broker license that was changed from salesperson to broker on that date shall be classified as a provisional broker as defined in G.S. 93A-2(a2).
- (b) A provisional broker as contemplated in subsection (a) of this section who was issued a salesperson license prior to October 1, 2005, shall, not later than April 1, 2008, complete a broker transition course prescribed by the Commission, not to exceed 24 classroom hours of instruction, or shall demonstrate to the Commission that he or she possesses four years' full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years. If the provisional broker satisfies this requirement by April 1, 2008, the provisional status of his or her broker license will be terminated, and the broker will not be required to complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1). If the provisional broker fails to satisfy this requirement by April 1, 2008, his or her license will be placed on inactive status, if not already on inactive status, and he or she must complete the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) in order to terminate the provisional status of the broker license and to be eligible to return his or her license to active status.
- (c) An approved school or sponsor shall pay a fee of ten dollars (\$10.00) per licensee to the Commission for each licensee completing a broker transition course conducted by the school or sponsor, provided that these fees shall not be charged to a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.
- (d) A provisional broker as contemplated in subsection (a) of this section, who was issued a salesperson license between October 1, 2005, and March 31, 2006, shall, not later than April 1, 2009, satisfy the requirements of G.S. 93A-4(a1). Upon satisfaction of the requirements of G.S. 93A-4(a1), the provisional status of the broker's license will be terminated. If the provisional broker fails to satisfy the requirements of G.S. 93A-4(a1) by April 1, 2009, the broker's license shall be cancelled, and the person will be subject to the requirements for licensure reinstatement prescribed by G.S. 93A-4(a1).
- (e) A broker who was issued a broker license prior to April 1, 2006, shall not be required to complete either the 90-classroom-hour broker postlicensing education program prescribed by G.S. 93A-4(a1) or the broker transition course prescribed by subsection (b) of this section.

- (f) For the purpose of determining a licensee's status, rights, and obligations under this section, the Commission may treat a person who is issued a license on or after the October 1, 2005, or April 1, 2006, dates cited in subsections (a), (b), (d), or (e) of this section as though the person had been issued a license prior to those dates if the only reason the person's license was not issued prior to those dates was that the person's application was pending a determination by the Commission as to whether the applicant possessed the requisite moral character for licensure. If a license application is pending on April 1, 2006, for any reason other than a determination by the Commission as to the applicant's moral character for licensure, and if the applicant has not satisfied all education and examination requirements for licensing in effect on April 1, 2006, the applicant's application shall be cancelled and the application fee refunded.
- (g) No applications for a real estate salesperson license shall be accepted by the Commission between September 1, 2005, and September 30, 2005.

**§ 93A-5. Register of applicants and roster of brokers.**

- (a) The Executive Director of the Commission shall keep a register of all applicants for license, showing for each the date of application, name, place of residence, and whether the license was granted or refused. Said register shall be prima facie evidence of all matters recorded therein.
- (b) The Executive Director of the Commission shall also keep a current roster showing the names and places of business of all licensed real estate brokers, which roster shall be kept on file in the office of the Commission and be open to public inspection.
- (c) The Commission shall file reports annually as required by G.S. 93B-2.

**§ 93A-6. Disciplinary action by Commission.**

- (a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.  
The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:
  - (1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact.

- (2) Making any false promises of a character likely to influence, persuade, or induce.
- (3) Pursuing a course of misrepresentation or making of false promises through agents, advertising or otherwise.
- (4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.
- (5) Accepting a commission or valuable consideration as a real estate broker on provisional status for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is employed.
- (6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.
- (7) Failing, within a reasonable time, to account for or to remit any monies coming into his or her possession which belong to others.
- (8) Being unworthy or incompetent to act as a real estate broker in a manner as to endanger the interest of the public.
- (9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this Chapter.
- (10) Any other conduct which constitutes improper, fraudulent or dishonest dealing.
- (11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of law.
- (12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in a bank as provided by subsection (g) of this section all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the custodian or manager of the funds of another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued.
- (13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the seller.
- (14) Failing, at the time a sales transaction is consummated, to deliver to the broker's client a detailed and accurate closing statement showing the receipt and disbursement of all monies relating to

the transaction about which the broker knows or reasonably should know. If a closing statement is prepared by an attorney or lawful settlement agent, a broker may rely on the delivery of that statement, but the broker must review the statement for accuracy and notify all parties to the closing of any errors.

- (15) Violating any rule adopted by the Commission.
- (b) The Commission may suspend or revoke any license issued under the provisions of this Chapter or reprimand or censure any licensee when:
- (1) The licensee has obtained a license by false or fraudulent representation;
  - (2) The licensee has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of any misdemeanor or felony that involves false swearing, misrepresentation, deceit, extortion, theft, bribery, embezzlement, false pretenses, fraud, forgery, larceny, misappropriation of funds or property, perjury, or any other offense showing professional unfitness or involving moral turpitude which would reasonably affect the licensee's performance in the real estate business;
  - (3) The licensee has violated any of the provisions of G.S. 93A-6(a) when selling, leasing, or buying the licensee's own property;
  - (4) The broker's unlicensed employee, who is exempt from the provisions of this Chapter under G.S. 93A-2(c)(6), has committed, in the regular course of business, any act which, if committed by the broker, would constitute a violation of G.S. 93A-6(a) for which the broker could be disciplined; or
  - (5) The licensee, who is also licensed as an appraiser, attorney, home inspector, mortgage broker, general contractor, or member of another licensed profession or occupation, has been disciplined for an offense under any law involving fraud, theft, misrepresentation, breach of trust or fiduciary responsibility, or willful or negligent malpractice.
- (c) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or rules adopted by the Commission. The superior court shall have the power to grant these injunctions even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the Commission.
- (d) Each broker shall maintain complete records showing the deposit, maintenance, and withdrawal of money or other property owned by the broker's principals or held in escrow or in trust for the broker's principals. The Commission may inspect these records periodical-

ly, without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a licensee.

- (e) When a person or entity licensed under this Chapter is accused of any act, omission, or misconduct which would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commission, may surrender the license and all the rights and privileges pertaining to it for a period of time established by the Commission. A person or entity who surrenders a license shall not thereafter be eligible for or submit any application for licensure as a real estate broker during the period of license surrender.
- (f) In any contested case in which the Commission takes disciplinary action authorized by any provision of this Chapter, the Commission may also impose reasonable conditions, restrictions, and limitations upon the license, registration, or approval issued to the disciplined person or entity. In any contested case concerning an application for licensure, time share project registration, or school, sponsor, instructor, or course approval, the Commission may impose reasonable conditions, restrictions, and limitations on any license, registration, or approval it may issue as a part of its final decision.
- (g) A broker's trust or escrow account shall be a demand deposit account in a federally insured depository institution lawfully doing business in this State which agrees to make its records of the broker's account available for inspection by the Commission's representatives.
- (h) The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter the order upon the judgment docket of the county.

#### **§ 93A-6.1. Commission may subpoena witnesses, records, documents, or other materials.**

- (a) The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for inspection or deliver the same into the custody of the Commission's authorized representatives. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if

the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in any county where the person to whom the subpoena is issued maintains a residence or place of business for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

- (b) The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution. Notwithstanding the exemption, whenever the Commission issues a subpoena under this subsection, the Commission shall send a copy to the licensee at his or her address of record by regular mail.

#### **§ 93A-7. Power of courts to revoke.**

Whenever any person, partnership, association or corporation claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described and shall file suit upon such claim against such licensee in any court of record in this State and shall recover judgment thereon, such court may as part of its judgment or decree in such case, if it deem it a proper case in which so to do, order a written copy of the transcript of record in said case to be forwarded by the clerk of court to the chairman of the said Commission with a recommendation that the licensee's certificate of license be revoked.

#### **§ 93A-8. Penalty for violation of Chapter.**

Any person violating G.S. 93A-1 shall upon conviction thereof be deemed guilty of a Class 1 misdemeanor.

#### **§ 93A-9. Licensing foreign brokers.**

- (a) The Commission may issue a broker license to an applicant licensed in a foreign jurisdiction who has satisfied the requirements for licensure set out in G.S. 93A-4 or such other requirements as the Commission in its discretion may by rule require.
- (b) The Commission may issue a limited broker's license to a person or an entity from another state or territory of the United States without regard to whether that state or territory offers similar licensing privileges to residents in North Carolina if the person or entity satisfies all of the following:
  - (1) Is of good moral character and licensed as a real estate broker or salesperson in good standing in an-

other state or territory of the United States.

- (2) Only engages in business as a real estate broker in North Carolina in transactions involving commercial real estate and while the person or entity is affiliated with a resident North Carolina real estate broker.
- (3) Complies with the laws of this State regulating real estate brokers and rules adopted by the Commission.

The Commission may require an applicant for licensure under this subsection to pay a fee not to exceed three hundred dollars (\$300.00). All licenses issued under this subsection shall expire on June 30 of each year following issuance or on a date that the Commission deems appropriate unless the license is renewed pursuant to the requirements of G.S. 93A-4. A person or entity licensed under this subsection may be disciplined by the Commission for violations of this Chapter as provided in G.S. 93A-6 and G.S. 93A-54.

Any person or entity licensed under this subsection shall be affiliated with a resident North Carolina real estate broker, and the resident North Carolina real estate broker shall actively and personally supervise the licensee in a manner that reasonably assures that the licensee complies with the requirements of this Chapter and rules adopted by the Commission. A person or entity licensed under this subsection shall not, however, be affiliated with a resident North Carolina real estate provisional broker. The Commission may exempt applicants for licensure under this subsection from examination and the other licensing requirements under G.S. 93A-4. The Commission may adopt rules as it deems necessary to give effect to this subsection, including rules establishing: (i) qualifications for licensure; (ii) licensure and renewal procedures; (iii) requirements for continuing education; (iv) conduct of persons and entities licensed under this subsection and their affiliated resident real estate brokers; (v) a definition of commercial real estate; and (vi) any requirements or limitations on affiliation between resident real estate brokers and persons or entities seeking licensure under this subsection.

#### **§ 93A-10. Nonresident licensees; filing of consent as to service of process and pleadings.**

Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in any of the courts of record of this State, by the service of any process or pleading authorized by the laws of this State in any county in which the plaintiff may reside, by serving the same on the Executive Director of the Commission, said consent stipulating and agreeing that such service of such process or pleadings on said Executive Director shall be taken and held in all courts to be valid and binding as if due service had been made personally upon the applicant in this State. This consent shall be duly acknowledged, and, if

made by a corporation, shall be executed by an officer of the corporation. The signature of the officer on the consent to service instrument shall be sufficient to bind the corporation and no further authentication is necessary. An application from a corporation or other business entity shall be signed by an officer of the corporation or entity or by an individual designated by the Commission. In all cases where process or pleadings shall be served, under the provisions of this Chapter, upon the Executive Director of the Commission, such process or pleadings shall be served in duplicate, one of which shall be filed in the office of the Commission and the other shall be forwarded immediately by the Executive Director of the Commission, by registered mail, to the last known business address of the nonresident licensee against which such process or pleadings are directed.

#### **§ 93A-11. Reimbursement by real estate independent contractor of brokers' workers' compensation.**

- (a) Notwithstanding the provisions of G.S. 97-21 or any other provision of law, a real estate broker may include in the governing contract with a real estate broker on provisional status whose nonemployee status is recognized pursuant to section 3508 of the United States Internal Revenue Code, 26 U.S.C. § 3508, an agreement for the broker on provisional status to reimburse the broker for the cost of covering that broker on provisional status under the broker's workers' compensation coverage of the broker's business.
- (b) Nothing in this section shall affect a requirement under any other law to provide workers' compensation coverage or in any manner exclude from coverage any person, firm, or corporation otherwise subject to the provisions of Article 1 of Chapter 97 of the General Statutes.

#### **§ 93A-12. Disputed monies.**

- (a) An escrow agent may deposit with the clerk of court in accordance with this section monies, other than a residential security deposit, the ownership of which are in dispute and that were received while the escrow agent was acting in a fiduciary capacity.
- (b) The disputed monies shall be deposited with the clerk of court in the county in which the property for which the disputed monies are being held is located. At the time of depositing the disputed monies, the escrow agent shall certify to the clerk of court that the persons claiming ownership of the disputed monies have been notified in accordance with subsection (c) of this section that the disputed monies are to be deposited with the clerk of court and that the persons may initiate a special proceeding with the clerk of court to recover the disputed monies.
- (c) Notice to the persons claiming ownership to the disputed monies required under subsection (b) of this section shall be provided by delivering a copy of the notice to the person or by mailing it to the person by first-class

mail, postpaid, properly addressed to the person at the person's last known address.

- (d) An escrow agent shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies.
- (e) Upon the filing of a special proceeding to recover the disputed monies, the clerk shall determine the rightful ownership of the monies and distribute the disputed monies accordingly. If no special proceeding is filed with the clerk of court within one year of the disputed monies being deposited with the clerk of court, the disputed monies shall be deemed unclaimed and shall be delivered by the clerk of court to the State Treasurer in accordance with the provisions of Article 4 of Chapter 116B of the General Statutes.
- (f) As used in this section, "escrow agent" means any of the following:
  - (1) A real estate broker licensed under this Chapter.
  - (2) An attorney licensed to practice law in this State.
  - (3) A title insurance company or title insurance agent licensed to conduct business in this State.

#### **§ 93A-13. Contracts for broker services.**

No action between a broker and the broker's client for recovery under an agreement for broker services is valid unless the contract is reduced to writing and signed by the party to be charged or by some other person lawfully authorized by the party to sign.

**Sections 93A-14 through 93A-15:** Reserved for future codification purposes.

### **ARTICLE 2.**

#### **REAL ESTATE EDUCATION AND RECOVERY FUND.**

##### **§ 93A-16. Real Estate Education and Recovery Fund created; payment to fund; management.**

- (a) There is hereby created a special fund to be known as the "Real Estate Education and Recovery Fund" which shall be set aside and maintained by the North Carolina Real Estate Commission. The fund shall be used in the manner provided under this Article for the payment of unsatisfied judgments where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any real estate broker. The Commission may also expend money from the fund to create books and other publications, courses, forms, seminars, and other programs and materials to educate licensees and the public in real estate subjects. However, the Commission shall make no expenditures from the fund for educational purposes if the expenditure will reduce the balance of the fund to an amount less than two hundred thousand dollars (\$200,000).
- (b) On September 1, 1979, the Commission shall transfer the

sum of one hundred thousand dollars (\$100,000) from its expense reserve fund to the Real Estate Education and Recovery Fund. Thereafter, the Commission may transfer to the Real Estate Education and Recovery Fund additional sums of money from whatever funds the Commission may have, provided that, if on December 31 of any year the amount remaining in the fund is less than fifty thousand dollars (\$50,000), the Commission may determine that each person or entity licensed under this Chapter, when renewing a license, shall pay in addition to the license renewal fee, a fee not to exceed ten dollars (\$10.00) per broker as shall be determined by the Commission for the purpose of replenishing the fund.

- (c) The Commission shall invest and reinvest the monies in the Real Estate Education and Recovery Fund in the same manner as provided by law for the investment of funds by the clerk of superior court. The proceeds from such investments shall be deposited to the credit of the fund.
- (d) The Commission shall have the authority to adopt rules and procedures not inconsistent with the provisions of this Article, to provide for the orderly, fair and efficient administration and payment of monies held in the Real Estate Education and Recovery Fund.

##### **§ 93A-17. Grounds for payment; notice and application to Commission.**

- (a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by any licensed real estate broker shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:
    - (1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;
    - (2) The aggrieved person has sued the real estate broker in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Education and Recovery Fund is for an amount less than three thousand dollars (\$3,000), excluding attorneys' fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;
    - (3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker on grounds of conversion of trust funds arising out of a transaction which occurred when such broker was licensed and acting in a capacity for which a license is required; and
    - (4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.
- Upon the termination of all judicial proceedings includ-

ing appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Education and Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission.

- (b) For the purposes of this Article, the term “trust funds” shall include all earnest money deposits, down payments, sales proceeds, tenant security deposits, undisbursed rents and other such monies which belong to another or others and are held by a real estate broker acting in that capacity. Trust funds shall also include all time share purchase monies which are required to be held in trust by G.S. 93A-45(c) during the time they are, in fact, so held. Trust funds shall not include, however, any funds held by an independent escrow agent under G.S. 93A-42 or any funds which the court may find to be subject to an implied, constructive or resulting trust.
- (c) For the purposes of this Article, the terms “licensee” and “broker” shall include only individual persons licensed under this Chapter as brokers. The terms “licensee” and “broker” shall not include a time share developer, time share project, independent escrow agent, corporation or other entity licensed under this Chapter.

#### **§ 93A-18. Hearing; required showing.**

Upon application by an aggrieved person, the Commission shall conduct a hearing and the aggrieved person shall be required to show that the aggrieved person:

- (1) Is not a spouse of the judgment debtor or a person representing such spouse;
- (2) Is making application not more than one year after termination of all judicial proceedings, including appeals, in connection with the judgment;
- (3) Has complied with all requirements of this Article;
- (4) Has obtained a judgment as described in G.S. 93A-17, stating the amount owing thereon at the date of application;
- (5) Has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;
- (6) After searching as described in subdivision (5) of this section, has discovered no real or personal property or other assets liable to be sold or applied, or has discovered certain of them, describing them, but the amount so realized was insufficient to satisfy the judgment, stating the amount realized and the balance remaining due on the judgment after application of the amount realized;

- (7) Has diligently pursued the aggrieved person’s remedies, which include attempting execution on the judgment against all the judgment debtors, which execution has been returned unsatisfied; and
- (8) Knows of no assets of the judgment debtor and has attempted collection from all other persons who may be liable for the transaction for which the aggrieved person seeks payment from the Real Estate Education and Recovery Fund if there be any such other persons.

#### **§ 93A-19. Response and defense by Commission and judgment debtor; proof of conversion.**

- (a) Whenever the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend such action on behalf of the fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may defend such action on his or her own behalf and shall have recourse to all appropriate means of defense, including the examination of witnesses. Counsel for the Commission and the judgment debtor may file responses to the application, setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person or persons having knowledge of the facts and may be made on the basis that the application or the judgment referred to therein do not form a basis for meritorious recovery within the purview of G.S. 93A-17, that the applicant has not complied with the provisions of this Article, or that the liability of the fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of the motion shall be given at least 10 days prior to the time fixed for hearing. If the applicant or judgment debtor fails to appear at the hearing after receiving notice of the hearing, the applicant or judgment debtor waives the person’s rights unless the absence is excused by the Commission.
- (b) Whenever the judgment obtained by an applicant is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant, for purposes of this Article, shall have the burden of proving the cause of action for conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the conversion of trust funds. This presumption is a presumption affecting the burden of producing evidence.

**§ 93A-20. Order directing payment out of fund; compromise of claims.**

Applications for payment from the Real Estate Education and Recovery Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds the claim should be paid from the fund, the Commission shall enter an order requiring payment from the fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor. If a claim appears to be otherwise meritorious, the Commission may waive procedural defects in the application for payment.

**§ 93A-21. Limitations; pro rata distribution; attorney fees.**

(a) Payments from the Real Estate Education and Recovery Fund shall be subject to the following limitations:

- (1) The right to recovery under this Article shall be forever barred unless application is made within one year after termination of all proceedings including appeals, in connection with the judgment.
- (2) The fund shall not be liable for more than fifty thousand dollars (\$50,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction.
- (3) Payment from the fund shall not exceed in the aggregate twenty-five thousand dollars (\$25,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate seventy-five thousand dollars (\$75,000) for any one licensee.
- (4) The fund shall not be liable for payment of any judgment awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action or other similar awards.

(b) If the maximum liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in such manner as the Commission, in its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission may require all claimants and prospective claimants to be joined in one proceeding to the end that the respective rights of all such claimants to the Real Estate Education and Recovery Fund may be equitably resolved. A person who files an application for payment after the maximum liability of the fund for the licensee or transaction has been exhausted shall not be entitled to

payment and may not seek judicial review of the Commission's award of payment to any party except upon a showing that the Commission abused its discretion.

(c) In the event an aggrieved person is entitled to payment from the fund in an amount which is equal to or less than the maximum amount of money which may be awarded in small claims court under G.S. 7A-210, the Commission may allow such person to recover from the fund reasonable attorney's fees incurred in effecting such recovery. Reimbursement for attorney's fees shall be limited to those fees incurred in effecting recovery from the fund and shall not include any fee incurred in obtaining judgment against the licensee.

**§ 93A-22. Repayment to fund; automatic suspension of license.**

Should the Commission pay from the Real Estate Education and Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker, any license issued to the broker shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker shall be granted a reinstatement until the fund has been repaid in full, including interest at the legal rate as provided for in G.S. 24-1.

**§ 93A-23. Subrogation of rights.**

When the Commission has paid from the Real Estate Education and Recovery Fund any sum to the judgment creditor, the Commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all right, title, and interest in the judgment to the extent of the amount so paid to the Commission and any amount and interest so recovered by the Commission on the judgment shall be deposited in the Real Estate Education and Recovery Fund.

**§ 93A-24. Waiver of rights.**

The failure of an aggrieved person to comply with this Article shall constitute a waiver of any rights hereunder.

**§ 93A-25. Persons ineligible to recover from fund.**

No real estate broker who suffers the loss of any commission from any transaction in which he or she was acting in the capacity of a real estate broker shall be entitled to make application for payment from the Real Estate Education and Recovery Fund for the loss.

**§ 93A-26. Disciplinary action against licensee.**

Nothing contained in this Article shall limit the authority of the Commission to take disciplinary action against any licensee under this Chapter, nor shall the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.

**Sections 93A-27 through 93A-31:** Reserved for future codification purposes.

**ARTICLE 3.**  
**PRIVATE REAL ESTATE EDUCATION**  
**PROVIDERS AND CONTINUING EDUCATION**  
**REQUIREMENTS.**

**§ 93A-32. Definitions.**

As used in this Article:

- (1) "Commission" means the North Carolina Real Estate Commission.
- (2) "Private real estate education provider" or "education provider" means any individual or real estate educational entity which is privately owned and conducting, for a profit or tuition charge, real estate broker prelicensing, postlicensing, or continuing education courses prescribed by G.S. 93A-4(a) or (a1) or G.S. 93A-38.5, provided that a proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 to conduct courses other than those real estate courses described herein shall not be considered to be a private real estate education provider.

**§ 93A-33. Commission to administer Article.**

The Commission shall have authority to administer and enforce this Article and to certify private real estate education providers as defined herein which have complied with the requirements of this Article and regulations promulgated by the Commission. Through certification applications, periodic reports required of education providers, periodic investigations, and appropriate regulations, the Commission shall exercise general supervisory authority over private real estate education providers, the object of such supervision being to protect the public interest and to assure the conduct of quality real estate education programs. To this end the Commission is authorized and directed to promulgate such regulations as it deems necessary which are not inconsistent with the provisions of this Article and which relate to the subject areas set out in G.S. 93A-34(c).

**§ 93A-34. Certification required; application for certification; fees; requirements for certification.**

- (a) No person, partnership, corporation, association, individual, or other entity shall operate or offer to operate in this State, whether live or in any online format, as a private real estate education provider as defined herein unless a certification is first obtained from the Commission in accordance with the provisions of this Article and the rules and regulations promulgated by the Commission under this Article. For certification purposes, each branch location where an education provider conducts courses shall be considered a separate

location requiring a separate certification.

- (b) Application for certification shall be filed in the manner and upon the forms prescribed by the Commission for that purpose. The Commission may by rule set nonrefundable application fees not to exceed two hundred fifty dollars (\$250.00) for each education provider and fifty dollars (\$50.00) for each real estate broker prelicensing or postlicensing course. The application for certification shall be accompanied by the appropriate fees.
- (b1) Applications for education providers utilizing methods other than only distance education shall contain all of the following:
  - (1) Name and address of the applicant;
  - (2) Names, biographical data, and qualifications of director, administrators and instructors;
  - (3) Description of education provider school facilities and equipment, if any.
  - (4) Description of course or courses to be offered and instructional materials to be utilized.
  - (5) Information on policies and procedures regarding administration, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.
  - (6) Copies of bulletins, catalogues, and other official publications.
  - (8) Any additional information as the Commission may deem necessary to enable it to determine the adequacy of the instructional program and the ability of the applicant to operate in such a manner as would best serve the public interest.
- (c) After due investigation and consideration by the Commission, certification shall be issued to the applicant when it is shown to the satisfaction of the Commission that the applicant and school are in compliance with the following standards, as well as the requirements of any supplemental regulations of the Commission regarding these standards:
  - (1) The program of instruction is adequate in terms of quality, content and duration.
  - (2) The director, administrators and instructors are adequately qualified by reason of education and experience.
  - (3) There are adequate facilities, equipment, instructional materials and instructor personnel to provide instruction of good quality.
  - (4) The education provider has adopted adequate policies and procedures regarding administration, instruction, record keeping, entrance requirements, registration, tuition and fees, grades, student progress, attendance, and student conduct.
  - (5) The education provider publishes and provides to all students upon enrollment a bulletin, catalogue or similar official publication which is certified as being true and correct in content and policy by an

authorized school official, and which contains all of the following information:

- a. Identifying data and publication date.
  - b. Name or names of education provider or providers and its full-time officials and faculty.
  - c. Education provider's policies and procedures relating to entrance requirements, registration, grades, student progress, attendance, student conduct and refund of tuition and fees.
  - d. Detailed schedule of tuition and fees.
  - e. Detailed course outline of all courses offered.
- (6) Adequate records as prescribed by the Commission are maintained in regard to grades, attendance, registration and financial operations.
  - (7) Institutional standards relating to grades, attendance and progress are enforced in a satisfactory manner.
  - (8) The applicant is financially sound and capable of fulfilling educational commitments made to students.
  - (9) The education provider's owner(s), director, administrators and instructors are of good reputation and character.
  - (10) The education provider's facilities and equipment comply with all applicable local, State and federal laws and regulations regarding health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.
  - (11) The education provider does not utilize advertising of any type which is false or misleading, either by actual statement, omission or intimation.
  - (12) Such additional standards as may be deemed necessary by the Commission to assure the conduct of adequate instructional programs and the operation of education providers in a manner which will best serve the public interest.

**§ 93A-35. Duration and renewal of certifications; transfer of school ownership**

- (a) All certifications issued shall expire on June 30 following the date of issuance.
- (b) Certifications shall be renewable annually on July 1, provided that a renewal application accompanied by the appropriate renewal fees has been filed not later than June 1 in the form and manner prescribed by the Commission, and provided further that the applicant and education provider are found to be in compliance with the standards established for issuance of an original certification. The Commission may by rule set nonrefundable renewal fees not to exceed one hundred twenty-five dollars (\$125.00) for each education provider location and twenty-five dollars (\$25.00) for each real estate broker

prelicensing and postlicensing course.

- (c) In the event an education provider entity is sold or ownership is otherwise transferred, the certification issued to the original owner is not transferable to the new owner. The new owner must apply for an original certification as prescribed by this Article and Commission regulations.

**§ 93A-36. Execution of bond required; applicability to branch schools; actions upon bond**

- (a) Before the Commission shall issue a certification the applicant shall execute a bond in the sum of five thousand dollars (\$5,000), payable to the State of North Carolina, signed by a solvent guaranty company authorized to do business in the State of North Carolina, and conditioned that the principal in said bond will carry out and comply with each and every contract or agreement, written or verbal, made and entered into by the applicant's education provider acting by and through its officers and agents with any student who desires to take any courses offered by the education provider and that said principal will refund to such students all amounts collected in tuition and fees in case of failure on the part of the party obtaining a certification from the Commission to operate as a private real estate education provider or to provide the instruction agreed to or contracted for. Such bond shall be required for each education provider for which a certification is required and shall be first approved by the Commission and then filed with the clerk of superior court of the county in which the school is located, to be recorded by such clerk in a book provided for that purpose. A separate bond shall not be required for each location of an education provider.
- (b) In any and all cases where the party licensed by the Commission fails to fulfill its obligations under any contract or agreement, written or verbal, made and entered into with any student, then the State of North Carolina, upon the relation of the student(s) entering into said contract or agreement, shall have a cause of action against the principal and surety on the bond herein required for the full amount of payments made to such party, plus court costs and six percent (6%) interest from the date of payment of said amount. Such suits shall be brought in Wake County Superior Court within one year of the alleged default.

**§ 93A-37. Repealed.**

**§ 93A-38. Suspension, revocation or denial of certification.**

The Commission shall have the power to suspend, revoke, deny issuance, or deny renewal of certification of a private real estate education provider. In all proceedings to suspend, revoke or deny a certification, the provisions of Chapter 150B of the General Statutes shall be applicable. The Com-

mission may suspend, revoke, or deny such certification or renewal thereof when it finds that the applicant or principal thereof or holder of such certification has done any of the following:

- (1) Refused or failed to comply with any of the provisions of this Article or the rules or regulations promulgated thereunder.
- (2) Knowingly presented to the Commission false or misleading information relating to matters within the purview of the Commission under this Article.
- (3) Presented to its students or prospective students false or misleading information relating to its instructional program, to the instructional programs of other institutions or to employment opportunities.
- (4) Failed to comply with the provisions of any contract or agreement entered into with a student.
- (5) At any time refused to permit authorized representatives of the Commission to inspect the school, or failed to make available to them upon request full information relating to matters within the purview of the Commission under the provisions of this Article or the rules or regulations promulgated thereunder.
- (6) Pleaded guilty, entered a plea of nolo contendere or been found guilty of a crime involving moral turpitude in any state or federal court.

#### **§ 93A-38.5. Continuing education.**

- (a) The Commission shall establish a program of continuing education for real estate brokers. An individual licensed as a real estate broker is required to complete eight hours of instruction a year during any license renewal period in subjects the Commission deems appropriate. Any licensee who fails to complete continuing education requirements pursuant to this section shall not actively engage in the business of real estate broker.
- (b) The Commission may, as part of the broker continuing education requirements, require real estate brokers-in-charge to complete during each annual license period a special continuing education course consisting of not more than four hours of instruction in subjects prescribed by the Commission.
- (c) The Commission shall establish procedures allowing for a deferral of continuing education for brokers while they are not actively engaged in real estate brokerage.
- (d) The Commission may adopt rules not inconsistent with this Chapter to implement the continuing education requirement, including rules that govern:
  - (1) The content and subject matter of continuing

education courses.

- (2) The curriculum of courses required.
  - (3) The criteria, standards, and procedures for the approval of courses, real estate education providers, and course instructors.
  - (4) The methods of instruction.
  - (5) The computation of course credit.
  - (6) The ability to carry forward course credit from one year to another.
  - (7) The deferral of continuing education for brokers not engaged in brokerage.
  - (8) The waiver of or variance from the continuing education requirement for hardship or other reasons.
  - (9) The procedures for compliance and sanctions for noncompliance.
- (e) The Commission may establish a nonrefundable course application fee to be charged to private real estate education providers for the review and approval of a proposed continuing education course. The fee shall not exceed one hundred twenty-five dollars (\$125.00) per course. The Commission may charge the private real estate education providers of an approved course a nonrefundable fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of course approval. A private real estate education provider shall pay a fee of ten dollars (\$10.00) per licensee to the Commission for each licensee completing an approved continuing education course conducted by the sponsor. The Commission shall not charge a course application fee, a course renewal fee, or any other fee for a continuing education course sponsored by a community college, junior college, college, or university located in this State and accredited by the Southern Association of Colleges and Schools.
- (f) The Commission may award continuing education credit for an unapproved course or related educational activity. The Commission may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Commission may charge a fee to the licensee for each course or activity submitted. The fee shall not exceed fifty dollars (\$50.00).

### **ARTICLE 4. TIMESHARES.**

#### **§ 93A-39. Title.**

This Article shall be known and may be cited as the "North Carolina Timeshare Act."

#### **§ 93A-40. Registration required of timeshare programs; real estate license required.**

- (a) Unless exempt under this Article, it shall be unlawful for any person in this State to engage or assume to engage in the business of a timeshare salesperson with-

out first obtaining a real estate broker license issued by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter unless the timeshare salesperson (i) meets the requirement for exemption set forth in G.S. 93A-2(c)(1) or (ii) is an employee of the registered timeshare developer whose income is reported on IRS Form W-2 of the registered timeshare's developer. It shall be unlawful for a timeshare developer to sell or offer to sell a timeshare required to be registered in this State pursuant to this Article without first obtaining a certificate of registration issued by the North Carolina Real Estate Commission under the provisions of this Article.

- (b) A person responsible as general partner, corporate officer, joint venturer, or sole proprietor who intentionally acts as a timeshare developer, allowing the offering of sale or the sale of timeshares to a purchaser, without first obtaining registration of the timeshare project under this Article shall be guilty of a Class I felony.
- (c) The provisions of this Article shall not apply to the following:
  - (1) Any arrangement, plan, scheme, or method, including a timeshare program, wherein the contractually specified maximum total financial obligation on the owner's part is three thousand dollars (\$3,000) or less during the entire term of the plan.
  - (2) Any arrangement, plan, scheme, or method, including a timeshare program, if the initial term and any renewal term are each for a period of five years or less, regardless of the owner's contractually specified maximum total financial obligation, if any; provided, however, that (i) the period of any optional renewal term which the owner, in the owner's sole discretion, may affirmatively elect to exercise, whether or not for additional consideration, shall not be included, and (ii) the period of any automatic renewals shall be included unless an owner has the right to terminate the membership at any time and receive a pro rata refund or the owner receives a notice no less than 30 days and no more than 60 days prior to any renewal term informing the owner of the right to terminate at any time prior to the date of automatic renewal.
  - (3) The offering or sale, in another jurisdiction, of a timeshare program containing timeshare units located in this State; provided, however, that the timeshare program has been registered with the Commission.
  - (4) The offering or sale, in this State, of a timeshare program containing only timeshare units located in another jurisdiction or jurisdictions.
  - (5) The offering or sale of no more than seven timeshares within a five-year period by a consumer time-

share reseller who has acquired the timeshares for their own use and occupancy and who later offers it for resale, provided that the owner complies with the provisions of G.S. 93A-67.

- (6) The offering or sale by a managing entity, not otherwise a developer, or a third party engaged by the managing entity, of 50 or fewer timeshares in the timeshare program which it manages in a given calendar year to purchasers who are not existing owners of that timeshare program, provided that the managing entity complies with the provisions of G.S. 93A-67.
- (7) The conveyance, assignment, or transfer of more than seven timeshares to a purchaser who subsequently conveys, assigns, or transfers all acquired timeshares to a single purchaser in a single transaction, which transaction may occur in stages.
- (8) A purchaser's acquisition, or the right to acquire, more than seven timeshare interests from an owner in connection with a loan, securitization, conduit, or similar financing arrangement transaction and who subsequently arranges for all or a portion of the timeshares to be offered by a developer in the ordinary course of business on its own behalf or on behalf of the purchaser.
- (9) The offering of an accommodation, product, service, discount, or other benefit which is incidental to the timeshare program and which is not necessary for any accommodation of the timeshare program to be available for use by an owner in a manner consistent in all material respects with the manner portrayed by any promotional material, advertising, or public offering statement.

#### **§ 93A-41. Definitions.**

When used in this Article, unless the context otherwise requires, the term:

- (1) **Assessment.** – The share of funds required for the payment of common expenses which is assessed from time to time against each owner by the managing entity.
- (2) **Board.** – The board of directors of a timeshare owners' association.
- (3) **Closing or close.** – One of the following:
  - (4) **"Exchange company"** means any person operating an exchange program;
    - a. For the sale and purchase of a timeshare estate, conveyance of the legal or beneficial title to the timeshare estate as evidenced by the delivery of a timeshare instrument for conveyance of legal title or beneficial title to the purchaser or to the clerk of superior court in the county where the timeshare estate is located for recording.
    - b. For the sale and purchase of a timeshare use,

- the final execution and delivery by all parties of the last document necessary for vesting in the purchaser the full rights available under the timeshare program.
- (4) Commission. – The North Carolina Real Estate Commission.
  - (5) “Common expense. – All of the following:
    - a. Those expenses, fees, or taxes properly incurred for the maintenance, operation, and repair of the timeshare units or facilities, or both, constituting the timeshare program.
    - b. Any other expenses, fees, or taxes designated as common expenses in a timeshare declaration.
  - (6) Conspicuous type. – A print type that is separated on all sides from other type and print and that is either (i) print type in upper- and lower-case letters two point sizes larger than the largest non-conspicuous type, exclusive of headings, on the page on which it appears, but not less than 10-point type, or (ii) where the use of 10-point type would be impractical or impossible, a different style of type or print that is conspicuous under the circumstances.
  - (7) Consumer resale timeshares. – One of the following:
    - a. A timeshare owned by an owner.
    - b. One or more reserved occupancy rights relating to a timeshare owned by an owner.
    - c. One or more reserved occupancy rights relating to, or arranged through, an exchange program in which an owner is a member.
  - (8) Consumer timeshare reseller. – An owner who acquires a timeshare for their own use and occupancy and later offers the timeshare or the occupancy rights associated with the timeshare for resale or rental, or who contracts with a transfer service provider.
  - (9) Developer. – Any person or entity which (i) creates a timeshare, timeshare project, or timeshare program, (ii) purchases a timeshare for purpose of resale, or (iii) is engaged in the business of selling timeshares it owns or controls and shall include any person or entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling timeshares for the developer.
  - (10) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (11) Enrolled. – Membership in an exchange program.
  - (12) Exchange company. – Any person operating an exchange program.
  - (13) Exchange program. – Any method, arrangement, or procedure for the voluntary exchange of the right to use and occupy timeshare units among owners, even if enrollment is not voluntary.
  - (14) Foreclosing party. – A trustee, mortgagee, managing entity, or their authorized agent who has the designated authority to pursue a nonjudicial foreclosure proceeding pursuant to G.S. 93A-62.
  - (15) Independent escrow agent. – A licensed attorney located in this State, or a federally insured depository institution or licensed title insurance underwriter or agency, lawfully doing business in this State, which agrees to make its records of the account available for inspection by the Commission’s representative; provided, however, that (i) the independent escrow agent is not a relative or an employee of the developer or managing entity, or of any officer, director, affiliate, or subsidiary thereof, (ii) there is no financial relationship, other than the payment of fiduciary fees, between the independent escrow agent and the developer or managing entity, or any officer, director, affiliate, or subsidiary thereof, and (iii) compensation paid by the developer to an independent escrow agent is not paid from funds in the escrow account unless and until the developer is otherwise entitled to receive the disbursement of such funds from the escrow account in accordance with this Article. A person shall not be disqualified to serve as an independent escrow agent solely because of any of the following:
    - a. A nonemployee, attorney-client relationship exists between the developer or managing entity and the independent escrow agent or any officer, director, affiliate, or subsidiary thereof.
    - b. The independent escrow agent provides the developer or managing entity with routine banking services which do not include construction or receivables financing or any other lending activities.
    - c. The independent escrow agent performs closings for the developer or issues owner’s or lender’s title insurance commitments or policies in connection with such closings.
    - d. The independent escrow agent is a licensed attorney or a licensed title insurance underwriter or agency and performs timeshare transfer services.
  - (16) Interest holder. – A developer, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the real property or personal property comprising or underlying the timeshare property, including the timeshares and the timeshare units, but excluding the timeshare declaration and any encumbrance placed against an owner’s timeshare securing the owner’s payment of purchase money financing

- for the purchase. With respect to a multisite timeshare program which contains timeshare units that are also part of an underlying timeshare program or condominium or other property regime, the term does not include a developer, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against a timeshare in an underlying timeshare program or against a timeshare unit or other accommodation in an underlying condominium or property regime, except as to any timeshare, timeshare unit, or other accommodation that is specifically subject to, or otherwise dedicated to, the multisite timeshare program.
- (17) **Lead dealer.** – A person who sells or otherwise provides a resale service provider or any other person with personal contact information for five or more purchasers or owners. If a lead dealer is not a natural person, the term shall also include the natural person providing personal contact information to a resale service provider or other person on behalf of the lead dealer entity. The term does not include developers, managing entities, or exchange companies to the extent they provide others with personal contact information about purchasers or owners of timeshares in their own timeshare programs or members of their own exchange programs. The term does not include persons providing personal contact information that is not designed specifically or primarily to identify owners of timeshares even though the information provided may include five or more purchasers or owners.
- (18) **Managing entity.** – Any developer, timeshare owners' association, or third-party management firm that has the duties, responsibilities, and obligations of managing a timeshare project or timeshare program.
- (19) **Multisite timeshare program.** – A timeshare program under which an owner obtains, by any means, a recurring right to reserve, use, or occupy timeshare units of more than one timeshare project through the mandatory use of a reservation system in competition with other owners in the same timeshare program.
- (20) **One-to-one use night to use right ratio.** – The ratio of the number of owners eligible to use the timeshare units on a given night to the number of timeshare units available for use within the timeshare program on that night, such that the total number of owners eligible to use the timeshare units during a given calendar year never exceeds the total number of timeshare units available for use in the timeshare program during that year. For purposes of the calculation under this definition, each owner must be counted at least once, and no individual timeshare units may be counted more than 365 times per calendar year or more than 366 times per leap year. An owner who is delinquent in the payment of timeshare program assessments shall continue to be considered eligible to use the timeshare units of the timeshare program for purposes of calculating the one-to-one use night to use right ratio.
- (21) **Owner.** – Any person, other than a developer, who has acquired a timeshare.
- (22) **Person.** – One or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof.
- (23) **Personal contact information.** – Any information that can be used to contact a purchaser or an owner, including, but not limited to, the purchaser's or owner's name, address, telephone number, and email address.
- (24) **Program broker.** – A natural person licensed as a real estate broker and designated by the developer to supervise brokers at the timeshare program.
- (25) **Purchaser.** – Any person, other than a developer, who is advertised or solicited to acquire a timeshare, offered a timeshare, or enters into a timeshare instrument to acquire a timeshare.
- (26) **Regulated party.** – Any developer, exchange company, managing entity, timeshare owners' association, timeshare owners' association director or officer, third-party management firm, independent escrow agent, lead dealer, resale broker, resale service provider, resale advertiser, timeshare transfer provider, timeshare registrar, any other person having duties or obligations pursuant to this Article, and any of their respective assignees or agents.
- (27) **Resale advertiser.** – Any person who offers, personally or through an agent, resale advertising services to consumer timeshare resellers for compensation or other valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the internet, or by any other medium of communication. The term does not include any of the following:
- a. A resale broker to the extent that resale advertising services are offered in connection with timeshare resale brokerage services and no fee for the resale advertising service is collected in advance.
  - b. A developer or managing entity to the extent that either of them offers resale advertising services to owners of timeshares in their own timeshare programs.
  - c. A newspaper, periodical, or website owner, operator, or publisher, unless the newspaper, periodical, or website owner, operator, or publisher derives more than ten percent (10%) of its gross revenue from providing re-

sale advertising services.

- (28) Resale advertising service. – The provision of any good or service relating to advertising or promoting the resale or rental of a consumer resale timeshare located or offered within this State, including any offer to advertise or promote the sale or purchase of any such interest.
- (29) Resale broker. – Any person who is issued a broker's license by the North Carolina Real Estate Commission under the provisions of Article 1 of this Chapter and who offers or provides resale brokerage services to consumer timeshare resellers for compensation or other valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the internet, or by any other medium of communication. The term includes any agent or employee of a resale broker.
- (30) Resale brokerage services. – With respect to a consumer resale timeshare located or offered within this State, any activity that directly or indirectly consists of any of the activities regulated under G.S. 93A-1.
- (31) Resale service provider. – Any resale advertiser, or other person or entity, including any agent or employee of that person or entity, who offers resale brokerage or resale advertising services to consumer timeshare resellers. The term does not include (i) developers or managing entities to the extent they offer resale brokerage or resale advertising services to owners of timeshares in their own timeshare programs or (ii) resale brokers to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance.
- (32) Reservation system. – The method, arrangement, procedure, rules, and regulations by which an owner reserves the use and occupancy of a timeshare unit for one or more timeshare periods.
- (33) Reservation system operator. – The person who has the responsibility for operating any reservation system for the timeshare program. Unless the timeshare declaration provides otherwise, the operator of the reservation system is the managing entity of a timeshare program. The reservation system operator may be a third-party entity that has contracted with the developer or managing entity to provide the reservation system for the timeshare program, provided that the third party shall be deemed a managing entity as to the operation of the reservation system for purposes of this Article.
- (34) Timeshare. – A timeshare estate or timeshare use.
- (35) Timeshare declaration. – One or more documents, by whatever name denominated, establishing, creating, or governing the operation of a timeshare program.
- (36) Timeshare estate. – The right to occupy a timeshare unit coupled with ownership of any of the following real property interests:
  - a. A freehold estate or an estate for years with a future interest in property.
  - b. An ownership interest in a condominium unit.
  - c. A direct or indirect beneficial interest in a trust, provided that both of the following conditions are met:
    - 1. The timeshare instrument contains a provision declaring that such interests are real property interests.
    - 2. The trust does not contain any timeshares created in personal property.
- (37) Timeshare instrument. – An instrument transferring a timeshare or any interest, legal or beneficial, in a timeshare to a purchaser, including a contract, installment contract, lease, deed, or other instrument.
- (38) Timeshare owners' association. – An association made up of all owners of timeshares in a timeshare program, including developers.
- (39) Timeshare period. – The period or periods of time when an owner is afforded the opportunity to use a timeshare unit under the terms of the timeshare program.
- (40) Timeshare program. – Any arrangement, plan, program, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement, or by any other means whereby an owner receives the right to use timeshare units for a period of time less than a full year during any given year, but not necessarily for consecutive years.
- (41) Timeshare project. – A specific geographic site where all or a portion of the timeshare units of a timeshare program are located. If phased development is permitted under applicable law, separate phases operated as a single development located at a specific geographic site under common management may be deemed a single timeshare project by the developer.
- (42) Timeshare property. – The property included in or subject to a timeshare program, including timeshares in an underlying timeshare program, one or more timeshare units, any amenities, any other property, and appurtenant property or rights.
- (43) Timeshare registrar. – A natural person who is designated by the developer to record or cause timeshare instruments and lien releases to be recorded and to fulfill the other duties imposed by this Article.
- (44) Timeshare salesperson. – A person who sells or offers to sell on behalf of a developer a timeshare to a

purchaser.

- (45) Timeshare transfer services. – Any service offered or provided in this State, or offered or provided anywhere in connection with a timeshare program containing timeshare units or a timeshare property located in this State, that provides assistance in the resale, transfer, relinquishment, or other disposition of a consumer timeshare reseller's timeshare, including a reconveyance or other transfer to a developer or managing entity, whether referred to as timeshare exit, timeshare cancellation, timeshare relief, or any similar phrase. The term does not include resale advertising services.
- (46) Timeshare transfer services agreement. – A contract or other agreement between a transfer service provider and a consumer timeshare reseller in which the transfer service provider agrees to provide such services.
- (46) Timeshare unit. – The real property or real property improvement in a project which is divided into timeshares and designated for separate occupancy and use.
- (48) Timeshare use. – The right to occupy a timeshare unit that is not coupled with ownership of a real property interest.
- (49) Transfer service provider. – Any person, including any agent, representative, subsidiary, successor, or employee of that person or entity, unless otherwise exempt, who offers or uses telemarketing, direct mail, email, or any other means of communication in connection with the offering of timeshare transfer services.

**§ 93A-42. Timeshare states deemed real estate; timeshare uses.**

- (a) A timeshare is deemed to be an interest in real estate and shall be governed by the law of this State relating to real estate.
- (b) An owner of a timeshare located in the State may, in accordance with G.S. 47-18, register the timeshare instrument by which the owner acquired interest and upon such registration shall be entitled to the protection provided by Chapter 47 of the General Statutes for the recordation of other real property instruments. A timeshare instrument transferring or encumbering a timeshare estate shall not be rejected for recordation because of the nature or duration of that estate, provided all other requirements necessary to make an instrument recordable are complied with. An instrument concerning a timeshare use shall not be recorded in the office of the register of deeds in any county in this State.
- (c) Unless the timeshare instrument provides otherwise, the developer shall close on the sale of a timeshare estate and record or cause to be recorded a timeshare instrument for timeshare estates located in this State no later than 180

days following the execution of the contract of sale by the purchaser, provided that all payments made by the purchaser have been placed by the developer with an independent escrow agent in accordance with G.S. 93A-45.

- (e) In no event shall the developer be required to close and record a timeshare instrument if the purchaser is in default of the purchaser's obligations under the contract of sale
- (f) Recordation under the provisions of this section of the timeshare instrument shall constitute delivery of that instrument from the developer to the purchaser.
- (g) A timeshare use is not an interest in real property and shall be governed by the laws of this State relating to personal property. For each transfer of the legal title to a timeshare use by a developer, the developer shall deliver an instrument evidencing such transfer to the purchaser at closing. Unless the timeshare instrument provides otherwise, the developer shall close on the sale of a timeshare use no later than 180 days following the execution of the contract of sale by the purchaser, provided that all payments made by the purchaser shall be placed by the developer with an independent escrow agent in accordance with G.S. 93A-45. In no event shall the developer be required to close on the sale of a timeshare use if the purchaser is in default of the purchaser's obligations under the contract of sale.
- (h) A developer may not sell or close on the sale of any timeshare that would cause the total number of timeshares available for use in the timeshare program to exceed the one-to-one use right to use ratio.

**§ 93A-42.1 Construction and validity of declarations adopted prior to the Timeshare Act.**

- (a) All provisions contained in timeshare declarations adopted and recorded at the appropriate register of deeds office prior to July 1, 1984, are severable.
- (b) The rule against perpetuities may not be applied to defeat any provision of timeshare declarations or bylaws adopted and recorded at the appropriate register of deeds office prior to July 1, 1984.
- (c) Except as otherwise provided in the timeshare declaration, the board of directors of a timeshare project may, by an affirmative vote of two-thirds of the board, amend a provision within the timeshare declaration, provided that the provision to be changed meets all of the following criteria:
  - (1) The provision was adopted as part of the original timeshare declaration recorded prior to July 1, 1984.
  - (2) The provision either converts or provides a mechanism to convert ownership of timeshare units to tenancy in common.
- (d) Title or interest in a timeshare project or unit is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the timeshare declaration

to comply with this section. Whether a substantial failure to comply with this section impairs marketability shall be determined by the laws of this State relating to marketability.

- (e) This section shall not otherwise impair the ability of the individual timeshare owner's right under the timeshare declaration, bylaws, or the laws of this State to vote to terminate the timeshare project or to amend the declaration to provide for the termination of the timeshare project and interests. (2014-99, s. 1.)

#### **§ 93A-43. Partition.**

When a timeshare is owned by two or more persons as tenants in common or as joint tenants either may seek a partition by sale of that interest but no owner of a timeshare may maintain an action for partition by sale or in kind of the timeshare unit, timeshare project, or timeshare program in which such timeshare is held.

#### **§ 93A-44. Contract of sale; public offering statement.**

- (a) The contract of sale between a developer and a purchaser for the sale and purchase of a timeshare must include the following:

- (1) The name and address of the developer.
- (2) The name and address of the timeshare program being offered.
- (3) An identification or legal description of the timeshare being sold, including whether any interest in real property or personal property is being conveyed and the number of years constituting the term of the timeshare program or the timeshare if less than the term of the timeshare program.
- (4) If the purchaser acquires a timeshare in a specific timeshare project, the name and location of the timeshare project to which the specific timeshare relates.
- (5) A statement that the purchaser should refer to the timeshare public offering statement for more information required to be provided to the purchaser.
- (6) The initial purchase price and all additional charges to which the purchaser may be subject in connection with the purchase of the timeshare, such as financing, or which will be collected from the purchaser on or before closing, such as the current year's annual assessment or any initial or special fee together with a description of the purpose of such initial or special fee.
- (7) A statement disclosing the amount of the periodic assessments currently assessed against or collected from owners who own similar types of timeshares in that timeshare program.
- (8) The name and address of the independent escrow agent required by G.S. 93A-45(d).
- (9) The purchaser's address for the purposes of deliv-

ery of any notices.

- (10) The date the purchaser signs the contract of sale.
  - (11) The following statement in conspicuous type: "Any resale of this timeshare must be accompanied by certain disclosures in accordance with the North Carolina Timeshare Act."
  - (12) A statement in conspicuous type immediately prior to the purchaser's signature block in substantially the following form: "You may cancel this contract of sale without any penalty or obligation before midnight five days after the date you sign this contract of sale or received the required public offering statement and all documents required to be delivered to you, whichever is later. If you decide to cancel this contract of sale, you must notify the developer in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to the developer at [insert address]. Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing on your purchase before expiration of your five-day cancellation period is prohibited."
- (b) Prior to the execution of a contract of sale by a purchaser, each developer shall provide the purchaser with a public offering statement and shall obtain from the purchaser a written acknowledgement of receipt of the public offering statement and any documents required to be delivered to the purchaser. In addition to any other information that the developer discloses, the public offering statement must contain the following:
    - (1) A cover page stating only the name of the timeshare program and in conspicuous type, substantially the following statement: "This public offering statement contains important matters to be considered in acquiring a timeshare. The statements contained in this public offering statement are only summary in nature. Purchaser should refer to all references, accompanying exhibits, contract documents, finance documents, and sales materials. Purchaser should not rely upon oral representations as being correct. The developer is prohibited from making any representations other than those contained in the contract of sale and this public offering statement."
    - (2) The name and principal address of the developer.
    - (3) A general description of the timeshare program, including the nature and types of timeshares in the timeshare program and if it is a multisite timeshare program.
    - (4) A description of the duration of the timeshare program and whether it includes timeshares having a shorter duration than the duration of the timeshare program.

- (5) A description of the method by which an owner can reserve, use, and occupy the timeshare units, including the following:
- a. The name and principal address of the entity that owns the reservation system and the entity responsible for operating the reservation system, their relationship to the developer, and the duration of any agreement for operating the reservation system.
  - b. A summary of the material rules governing access to and use of the reservation system, including (i) a description of the limitations, restrictions, or priorities applied in the operation of the timeshare program, (ii) if such limitations, restrictions, or priorities are not uniformly applied, a description of the manner in which they are applied, (iii) an explanation of any priority reservation features that affect an owner's ability to make reservations for the use of a given timeshare unit on a first-come, first-served basis, (iv) whether the owner must be in good standing with respect to payment of all sums due the managing entity in order to reserve, use, or occupy a timeshare unit, and (v) the terms and conditions for making, deferring, or cancelling reservations, including any transaction fees or other charges and, if applicable, a statement that such fees or charges are subject to change without owner approval.
  - c. Any periodic adjustment or amendment to the reservation system that may be conducted in order to respond to owner use patterns and changes in owner use demand for the timeshare units, timeshare projects, or timeshare periods. If ownership or use of the timeshare program is based on a point system, a statement indicating the circumstances by which the point values may change, the extent of such changes, and the person or entity responsible for the changes.
  - d. Whether and under what circumstances an owner may lose the right to reserve, use, or occupy a timeshare unit without being provided with a substitute reservation, use, or occupancy.
  - e. The disposition of timeshares or time periods that are not reserved by owners prior to the start of the timeshare period or prior to the start of any established point in time and who has the right to reserve and benefit from such unreserved timeshares or timeshare periods.
  - f. If the operator of the reservation system is going to exercise the right granted to it by G.S. 93A-63(d) to reserve, deposit, or rent the timeshare periods or timeshare units for the purpose of facilitating the use or future use of the timeshare periods or timeshare units or other benefits made available through the timeshare program by owners, a statement in conspicuous type, in substantially the following form, shall be included: "The managing entity shall have the right to forecast anticipated reservation and use of the timeshare period or timeshare units and is authorized to reasonably reserve, deposit, or rent the timeshare period or timeshare units for the purpose of facilitating the use or future use of the accommodations or other benefits made available through the timeshare program by the owners."
  - g. Any use or transaction fees or charges to be paid by owners for the reservation, use, or occupancy of any timeshare units or amenities and, if applicable, a statement that the fees or charges are subject to change without owner approval.
  - h. The rules governing the making, cancelling, or transferring of reservations.
- (6) For each timeshare project, the following information:
- a. A description of the existing timeshare units and future timeshare units committed to be constructed or obtained, including the location of the timeshare project or timeshare projects in the timeshare program, and the number of bedrooms, number of bathrooms, sleeping capacity, and whether the timeshare unit contains a full kitchen for each timeshare project.
  - b. A description of any existing amenities and future amenities committed to be constructed or obtained, and whether such amenities are included as part of the ownership of a timeshare or made separately available and on what basis.
  - c. The estimated date that future timeshare units or amenities will be available as committed, and a description of financial arrangements for the completion or acquisition of future timeshare units or amenities as committed.
  - d. A description of the method and timing for performing maintenance of the timeshare units.
- (7) A statement indicating that, on an annual basis, the one-to-one use night to use right ratio will be maintained through the duration of the timeshare program, except temporarily pursuant to

- G.S. 93A-61(g), or temporarily as a result of a casualty or eminent domain action.
- (8) For multisite timeshare programs, a description of (i) any reserved rights to make additions, substitutions, or deletions of timeshare units, amenities, or timeshare projects, (ii) who has the authority to make such additions, substitutions, or deletions and whether owners have the right to consent, and (iii) the basis upon which such timeshare units, amenities, or timeshare projects may be added to, substituted for, or deleted from the timeshare program.
  - (9) With respect to the managing entity for the timeshare program, the following information, if applicable:
    - a. The name and principal address of the managing entity of the timeshare program.
    - b. Whether the managing entity for any timeshare project is different than the managing entity of the multisite timeshare program.
    - c. If there is a timeshare owners' association at a timeshare project or for a multisite timeshare program, whether owners are members of the timeshare owners' association, together with a general description of their rights and responsibilities with respect to the timeshare owners' association.
    - d. If there is a management firm, the term of the management agreement.
  - (10) A description of the method for calculating and apportioning assessments among owners, including the developer, together with a description of the consequences to the owner if assessments are not timely paid. The description shall also include whether reserves for the timeshare units and amenities have been established, and if not, or if any reserves are not fully funded, a statement to that effect in conspicuous type.
  - (11) If the developer intends to guarantee the level of assessments for the timeshare program, a statement disclosing that the developer may be excused from the payment of the developer's share of the assessments which would have been assessed against developer-owned timeshares during the guarantee period.
  - (12) A statement that the timeshare to be acquired by the purchaser and the timeshare property, on or before closing, (i) will be free and clear of any interest in or lien or encumbrance against the timeshare and the timeshare property by the developer or any interest holders or (ii) are the subject of a recorded subordination and notice to creditors instrument pursuant to G.S. 93A-57.
  - (13) A description of any civil or criminal suit or adjudication or disciplinary actions material to the timeshare program of which the developer has knowledge, including any bankruptcy of the developer that is pending or that has occurred within the past five years.
  - (14) A description of the insurance insuring the timeshare property for damage and destruction and insuring owners and, if applicable, the timeshare owners' association.
  - (15) A description of the requirements for, or restraint on, the transfer or rental of a timeshare, including any right of first refusal or the imposition of any fees or charges.
  - (16) A statement disclosing that any funds paid to the developer in connection with the purchase of a timeshare shall be held by an independent escrow agent in accordance with G.S. 93A-45(d) or that the developer has provided financial assurances in an amount equal to or in excess of the funds that would otherwise be held by the independent escrow agent, and that if the purchaser elects to exercise the right of cancellation or the developer defaults under the contract of sale, any funds paid to the developer shall be returned to the purchaser, as set forth in G.S. 93A-45(c).
  - (17) If the developer or managing entity provides purchasers with the opportunity to become a member of an exchange program in connection with the purchase of the timeshare, the name and address of the exchange company and the material terms of the opportunity.
  - (18) Any person who has or may have the right to alter, amend, or add to fees and charges to which the owner may be subject and the terms and conditions under which those fees and charges may be imposed.
  - (19) In conspicuous type, a statement in substantially the following form: "The purchase of a timeshare should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the timeshare may be rented or resold."
  - (20) A statement that under North Carolina law a timeshare instrument conveying a timeshare estate located in this State must be recorded in the register of deeds office at closing.
  - (21) Any other information which the Commission may by rule require. The Commission is also authorized to prescribe by rule the form of the public offering statement that must be furnished by the developer to each purchaser.
- (c) Prior to the execution of a contract of sale by a purchaser, the following documents, including any amendments, shall also be provided to the purchaser either attached as an exhibit to the public offering statement

or provided as a separate supplement with the public offering statement:

- (1) The timeshare declaration.
  - (2) The timeshare owners' association articles of incorporation and bylaws, if applicable.
  - (3) Any timeshare unit or timeshare project rules and regulations.
  - (4) Timeshare program reservation system rules and regulations.
  - (5) An estimate of the current year's operating budget for the timeshare program.
  - (6) For multisite timeshare programs where a timeshare is provided in a particular timeshare unit or timeshare project, the applicable documents governing the timeshare unit or timeshare project set forth in subdivisions (1) through (5) of this subsection must also be separately provided as part of the public offering statement.
- (d) Contemporaneously with the execution of a contract of sale by a purchaser, a copy of the contract of sale signed by the purchaser, receipt for the public offering statement signed by the purchaser, any financing documents signed by the purchaser, and any other document signed by the purchaser at the time of execution of the contract of sale shall be provided to the purchaser.
- (e) If the purchaser receives documents electronically at the time of execution of a contract of sale, the developer shall provide the purchaser a separate paper or email copy of the purchaser's cancellation rights in conspicuous type as described in G.S. 93A-44(a)(12).
- (f) The developer is prohibited from making any representations other than those contained in the contract of sale and the public offering statement.

**§ 93A-45. Purchaser's right to cancel; escrow; violation.**

- (a) A purchaser has the right to cancel the contract of sale until midnight of the fifth day after the later of the following events:
- (1) The purchaser's execution of the contract of sale.
  - (2) The purchaser's receipt of the public offering statement pursuant to G.S. 93A-44 and all other documents required to be provided to the purchaser pursuant to G.S. 93A-44.

The purchaser may not waive this right of cancellation. Any oral or written declaration or instrument that purports to waive this right of cancellation is void. No closing may occur until the cancellation period of the purchaser has expired.

- (b) Any notice of cancellation shall be considered given on the date postmarked if mailed, or when transmitted if delivered by electronic means, so long as the notice is actually received by the developer or independent escrow agent. If given by means of a writing transmitted other than by mail, the notice of cancellation shall be

considered given at the time of delivery at the place for receipt of notice provided by the developer.

- (c) Cancellation under this section is without penalty, and the refund of all monies received by the developer or timeshare salesperson shall be made within 20 days of demand therefor by the purchaser or within five days after receipt of cleared funds from the purchaser, whichever is later.
- (d) Prior to a purchaser's execution of a contract of sale, the developer shall establish an escrow account with an independent escrow agent for the purpose of protecting the funds of purchasers required to be escrowed by this subsection. Any funds received prior to closing by a developer or timeshare salesperson in connection with the sale of the timeshare shall be immediately deposited by the developer or salesperson in a trust or escrow account in a federally insured depository institution or a trust institution authorized to do business in this State and shall only be disbursed in accordance with subsection (f) of this section. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the developer. In lieu of escrow requirements, the Commission shall have the authority to accept, in its discretion, alternative financial assurances adequate to protect the purchaser's interest during the contract of sale cancellation period, including, but not limited to, a surety bond, corporate bond, cash deposit or irrevocable letter of credit in an amount equal to the escrow requirements or a financial assurance posted in another jurisdiction.
- (e) A developer shall not be entitled to the release of any escrowed funds until the developer has provided the independent escrow agent with (i) an affidavit stating that the purchaser has defaulted under the contract of sale and the developer is entitled to the escrowed funds pursuant to the terms of the contract of sale or (ii) an affidavit that the developer has performed all of its obligations under the purchase contract, including completion of construction of all promised timeshare units and amenities or the posting of an alternate financial assurance acceptable to the Commission securing the completion of construction, and the developer and purchaser have closed on the contract of sale, together with evidence satisfactory to the independent escrow agent that the timeshare and the timeshare property is either free and clear of interests in or liens or encumbrances against the timeshare and timeshare property of any interest holder or the developer has met the requirements of G.S. 93A-57(a).
- (f) An independent escrow agent shall maintain the accounts called for in this section only in such a manner as to be under the direct supervision and control of the independent escrow agent. The independent escrow agent shall have a fiduciary duty to each purchaser to maintain

the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this section. The independent escrow agent shall retain all affidavits received pursuant to this section for a period of five years. Should the independent escrow agent receive conflicting demands for funds or other property held in escrow that remain unresolved for more than 30 days, the independent escrow agent shall notify the Commission of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

- (g) If the contract of sale does not include the cancellation notice as required by G.S. 93A-44(a)(12), the owner, in addition to any rights to damages or other relief, is entitled to void the transfer and receive from the developer all funds paid for the timeshare together with an amount equal to ten percent (10%) of the sales price of the timeshare not to exceed three thousand dollars (\$3,000).
- (h) A timeshare declaration or other instrument establishing or governing a timeshare program or an underlying timeshare property regime is not an encumbrance for purposes of this Chapter and does not create a requirement for a subordination and notice to creditors instrument for purposes of this section from any person.
- (i) Any developer or independent escrow agent who intentionally fails to comply with the provisions of this Article concerning the establishment of an escrow account, deposits of funds into escrow, and withdrawal therefrom is guilty of a Class E felony. The failure to establish an escrow account or to place funds therein as required in this section is prima facie evidence of an intentional and purposeful violation of this subsection.

#### **§ 93A-46. Prizes.**

An advertisement of a timeshare which includes the offer of a prize or other inducement shall fully comply with the provisions of Chapter 75 of the General Statutes.

#### **§ 93A-47. Timeshares proxies.**

No proxy, power of attorney or similar device given by the owner of a timeshare regarding voting in a timeshare owners' association shall exceed one year in duration, but the same may be renewed from year to year.

#### **§ 93A-48. Exchange programs.**

- (a) If a purchaser is offered the opportunity to subscribe to any exchange program, the developer shall, except as provided in subsection (b) of this section, deliver to the purchaser, prior to the execution of (i) any contract between the purchaser and the exchange company, and (ii) the contract for sale, at least the following information regarding such exchange program:
  - (1) The name and address of the exchange company.
  - (2) The names of all officers, directors, and shareholders

owning five percent (5%) or more of the outstanding stock of the exchange company.

- (3) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing entity for any timeshare project participating in the exchange program and, if so, the name and location of the timeshare project and the nature of the interest.
- (4) Unless the exchange company is also the developer a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the contract for sale.
- (5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the timeshare project with the exchange program.
- (6) Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory.
- (7) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange company and the procedure by which changes thereto may be made.
- (8) A complete and accurate description of the procedure to qualify for and effectuate exchanges.
- (9) A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, unit size, or levels of occupancy, expressed in conspicuous type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied.
- (10) Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program.
- (11) Whether and under what circumstances an owner, in dealing with the exchange company, may lose the use and occupancy of the owner's timeshare in any properly applied for exchange without being provided with substitute accommodations by the exchange company.
- (12) The expenses, fees or range of fees for participation by owners in the exchange program, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made.
- (13) The name and address of the site of each timeshare project or other property which is participating in the exchange program.
- (14) The number of units in each timeshare project or other property participating in the exchange

program which are available for occupancy and which qualify for participation in the exchange program, expressed within the following numerical groupings, 1-5, 6-10, 11-20, 21-50 and 51, and over.

- (15) The number of owners with respect to each timeshare project or other property which are eligible to participate in the exchange program expressed within the following numerical groupings, 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those owners who are currently eligible to participate in the exchange program.
- (16) The disposition made by the exchange company of timeshares deposited with the exchange program by owners eligible to participate in the exchange program and not used by the exchange company in effecting exchanges.
- (17) The following information which, except as provided in subsection (b) of this section, shall be independently audited by a certified public accountant in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported for each year no later than July 1, of the succeeding year:
  - a. The number of owners enrolled in the exchange program and such numbers shall disclose the relationship between the exchange company and owners as being either fee paying or gratuitous in nature.
  - b. The number of timeshare projects or other properties eligible to participate in the exchange program categorized by those having a contractual relationship between the developer or the association and the exchange company and those having solely a contractual relationship between the exchange company and owners directly.
  - c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange requested was properly applied for.
  - d. The number of timeshares or other intervals for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a timeshare or interval during the year in exchange for a timeshare or interval in any future year.
  - e. The number of exchanges confirmed by the exchange company during the year.

- (18) A statement in conspicuous type to the effect that the percentage described in sub-subdivision c. of subdivision (17) of this subsection is a summary of the exchange requests entered with the exchange company in the period reported and that the percentage does not indicate a purchaser's/owner's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

The purchaser shall certify in writing to the receipt of the information required by this subsection and any other information which the Commission may by rule require.

- (b) The information required by subdivisions (2), (3), (13), (14), (15), and (17) of subsection (a) of this section shall be accurate as of December 31 of the year preceding the year in which the information is delivered, except for information delivered within the first 180 days of any calendar year which shall be accurate as of December 31 of the year two years preceding the year in which the information is delivered to the purchaser. The remaining information required by subsection (a) of this section shall be accurate as of a date which is no more than 30 days prior to the date on which the information is delivered to the purchaser.
- (c) In the event an exchange company offers an exchange program directly to the purchaser or owner, the exchange company shall deliver to each purchaser or owner, concurrently with the offering and prior to the execution of any contract between the purchaser or owner and the exchange company the information set forth in subsection (a) of this section. The requirements of this subsection shall not apply to any renewal of a contract between an owner and an exchange company.
- (d) All promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company to purchasers in this State which contain the percentage of confirmed exchanges described in sub-subdivision c. of subdivision (17) of subsection (a) of this section must include the statement set forth in subdivision (18) of subsection (a) of this section.

#### **§ 93A-49. Service of process on exchange company.**

Any exchange company offering an exchange program to a purchaser shall be deemed to have made an irrevocable appointment of the Commission to receive service of lawful process in any proceeding against the exchange company arising under this Article.

#### **§ 93A-50. Securities laws apply.**

The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to timeshares deemed to be investment contracts or to other securities offered with or incident to a timeshare; provided, however, in the event of the applicability of the North Carolina Securities Act, any offer or sale of timeshares registered un-

der this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36.

**§ 93A-51. Rule-making authority.**

The Commission shall have the authority to adopt rules and regulations that are not inconsistent with the provisions of this Article and the General Statutes of North Carolina. The Commission may prescribe forms and procedures for submitting information to the Commission.

**§ 93A-52. Application for registration of timeshare program; denial of registration; renewal; reinstatement; and termination of developer's interest.**

- (a) Prior to the offering in this State of any timeshare located in this State, the developer of the timeshare program shall make written application to the Commission for the registration of the program.
- (a1) The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed one thousand five hundred dollars (\$1,500), and shall include (i) a description of the program, (ii) copies of proposed timeshare declaration, timeshare program governing documents, public offering statement, form timeshare instrument, form contract for sale, if different than the timeshare instrument, and other documents referred to in the public offering statement, (iii) information pertaining to any marketing or managing entity to be employed by the developer for the sale of timeshares in a timeshare program, (iv) information regarding any exchange program available to the owner, (v) an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's timeshare salespersons arising under this Article, and (vi) such other information as the Commission may by rule require.
- (a2) Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale of the timeshares in the timeshare program will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer timeshares in the program for sale. The Commission shall, within 30 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 60 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail or by electronic means of any specific objections to the registration of the program. Once issued, the certificate shall be available for inspection upon request of the Commission, and a copy of the certificate shall be available for inspection by written re-

quest from any purchaser or owner.

- (a3) The developer shall promptly report to the Commission any and all material changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered timeshare program, other than the transfer of timeshares to purchasers in the ordinary course of its business. If a developer disposes of, or otherwise terminates its interest in a timeshare program, the developer shall cease all marketing and sales of timeshares, certify to the Commission in writing that its interest in the timeshare program is terminated, and shall return to the Commission for cancellation the certificate of registration.
- (b) If the Commission finds that there is substantial reason to deny the application for registration as a timeshare program, the Commission shall notify the developer that such application has been denied and shall afford the developer an opportunity for a hearing before the Commission to show cause why the application should not be denied. In all proceedings to deny a certificate of registration, the provisions of Chapter 150B of the General Statutes shall be applicable.
- (c) The acceptance by the Commission of an application for registration shall not constitute the approval of its contents or waive the authority of the Commission to take disciplinary action as provided by this Article.
- (d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after that date unless reinstated. A certificate may be renewed 45 days prior to the expiration date by filing an application with and paying to the Commission the timeshare registration renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars (\$1,500) for each timeshare program. Each certificate reinstated after the expiration date thereof shall be subject to a fee of fifty dollars (\$50.00) in addition to the required renewal fee. If a developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the timeshare program as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar (\$1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable.

**§ 93A-53. Register of applicants; roster of registrants; financial report to Secretary of State.**

- (a) The Executive Director of the Commission shall keep a register of all applicants for certificates of registration,

showing for each the date of application, name, business address, and whether the certificate was granted or refused.

- (b) The Executive Director of the Commission shall also keep a current roster showing the name and address of all timeshare programs registered with the Commission. The roster shall be kept on file in the office of the Commission and be open to public inspection.
- (c) The Commission shall include a copy of the roster of timeshare programs current on the preceding June 30 and a statement of the income received by the Commission in connection with the registration of timeshare programs during the fiscal year ending on June 30 with the report required by G.S. 93B-2.

#### **§ 93A-54. Disciplinary action by Commission.**

- (a) The Commission shall have power to take disciplinary action for violation of the provisions of this Article in the offering or sale of a timeshare program to a purchaser. Upon its own motion, or on the complaint of any person, the Commission may investigate the actions of any regulated party or any other person or entity who shall assume to act in such capacity of a regulated party. If the Commission finds probable cause that a timeshare regulated party has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.
- (b) The Commission has the power to suspend or revoke at any time a real estate license issued to a timeshare salesperson or program broker, or a certificate of registration of a timeshare program issued to a developer; or to reprimand or censure a regulated party; or to fine a regulated party in the amount of five hundred dollars (\$500.00) for each violation of this Article; or to impose any other specified penalty permitted under this Article; if, after a hearing, the Commission adjudges regulated party to be guilty of any of the following:
  - (1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact about any timeshare or timeshare program;
  - (2) Making any false promises of a character likely to influence, persuade, or induce.
  - (3) Pursuing a course of misrepresentation or making of false promises through agents, salespersons, advertising or otherwise.
  - (4) Failing, within a reasonable time, to account for all money received from others in a timeshare transaction, and failing to remit such monies as may be required in G.S. 93A-45 of this Article.
  - (5) Acting in a manner as to endanger the interest of the public.
  - (6) Paying a commission, salary, or other valuable consideration to any person for acts or services performed in violation of this Article.
  - (7) Any other conduct which constitutes improper, fraudulent, or dishonest dealing.
  - (8) Performing or undertaking to perform any legal service as set forth in G.S. 84-2.1, or any other acts not specifically set forth in that section.
- (9) Failing to deposit and maintain in an escrow account all money received from others in a timeshare transaction as may be required in G.S. 93A-42 or G.S. 93A-45.
- (10) Failing to deliver to a purchaser a public offering statement containing the information required by G.S. 93A-44 and any other disclosures that the Commission may by regulation require.
- (11) Failing to comply with the provisions of Chapter 75 of the General Statutes in the advertising or promotion of timeshares for sale, or failing to assure such compliance by persons engaged on behalf of a developer.
- (12) Failing to comply with the provisions of G.S. 93A-48 in furnishing complete and accurate information to purchasers concerning any exchange program which may be offered to such purchaser or owner.
- (13) Making any false or fraudulent representation on an application for registration.
- (14) Violating any rule or regulation promulgated by the Commission.
- (15) Failing to record or cause to be recorded a timeshare instrument as required by G.S. 93A-42(c1), or failing to provide an owner the protection against liens required by G.S. 93A-57(a).
- (16) Failing as a timeshare program broker to exercise reasonable and adequate supervision of the conduct of sales at a project or location by the brokers and salespersons under the timeshare program broker's control.
- (c) The clear proceeds of fines collected pursuant to subsection (b) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- (d) Following a hearing, the Commission shall also have power to suspend or revoke any certificate of registration issued under the provisions of this Article or to reprimand or censure any regulated party when the regulated party has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of the criminal offenses of embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud, or any other offense involving moral turpitude which would reasonably affect the regulated party's performance in the timeshare business.
- (e) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person or entity from violating the provisions of this Article or rules promulgated by the Commission. The superior court shall have the power to grant these in-

junctions even if criminal prosecution has been or may be instituted as a result of the violations, or regardless of whether the regulated party or person has been registered by the Commission.

- (f) Each developer shall maintain or cause to be maintained complete records of every timeshare transaction and each independent escrow agent shall maintain or cause to be maintained complete records pertaining to the deposit, maintenance, and withdrawal of money required to be held in an escrow account, or as otherwise required by the Commission, under G.S. 93A-45 of this Article. The Commission may inspect these records periodically without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a developer or independent escrow agent.
- (g) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker or registration of a timeshare program during the period of license surrender. For the purposes of this section, the term licensee shall include a timeshare developer.

#### **§ 93A-55. Private enforcement.**

The provisions of the Article shall not be construed to limit in any manner the right of a purchaser, owner, or other person injured by a violation of this Article to bring a private action.

#### **§ 93A-56. Penalty for violation of Article.**

Except as specifically provided elsewhere in this Article, any person violating the provisions of this Article shall be guilty of a Class 1 misdemeanor.

#### **§ 93A-57. Release of liens or subordination and notice to creditors instrument.**

- (a) Prior to any closing, the developer shall record a release of all liens or encumbrances affecting the timeshare being acquired by the purchaser or timeshare property or comply with one of the following:
  - (1) If there are any interest holders in the timeshare or timeshare property, the developer and any interest holders must execute and record a subordination and notice to creditors instrument in the jurisdiction in which the timeshare or timeshare program is situated. The subordination and notice to creditors instrument shall contain the following:

- a. Language sufficient to provide subsequent creditors of the developer and interest holder with notice of the existence of the timeshare program and of the rights of owners in order to protect the interests of the owners from any claims of subsequent creditors.
- b. A statement that the instrument shall be effective as between the owner and the developer and interest holder despite any bankruptcy proceedings involving the developer.
- c. A statement that so long as an owner remains in good standing with respect to the owner's obligations under the timeshare declaration, then the interest holder will honor all rights of the owner as reflected in the timeshare declaration.

- (2) If there are any interest holders in the timeshare or the timeshare property, the developer must make alternative arrangements that are adequate to protect the rights of the owners of the timeshares and timeshare property, provided that any alternative arrangement is approved by the Commission.

- (b) Unless a timeshare owner or a timeshare owner who the owner's predecessor in title agree otherwise with the lienor, if a lien other than a mortgage or deed of trust becomes effective against more than one timeshare in a timeshare program, any timeshare owner is entitled to a release of the owner's timeshare from a lien upon payment of the amount of the lien attributable to the owner's timeshare. The amount of the payment must be proportionate to the ratio that the owner's liability bears to the liabilities of all owners whose interests are subject to the lien. Upon receipt of payment, the lien holder shall promptly deliver to the owner a release of the lien covering that timeshare. After payment, the managing entity may not assess or have a lien against that timeshare for any portion of the expenses incurred in connection with that lien.

#### **§ 93A-58. Registrar required; criminal penalties; program broker.**

- (a) Every developer shall, by affidavit filed with the Commission, designate a natural person to serve as timeshare registrar for its registered timeshare program. The timeshare registrar shall be responsible for the recordation of timeshare instruments and the release of liens required by G.S. 93A-42(c) and G.S. 93A-57(a). A developer may, from time to time, change the designated timeshare registrar by proper filing with the Commission and by otherwise complying with this subsection. No sales or offers to sell shall be made until the registrar is designated for a timeshare program.
- (b) The timeshare registrar has the duty to ensure that the provisions of this Article are complied with in a timeshare program for which the person is the timeshare registrar. No timeshare registrar shall record a timeshare in-

strument except as provided by this Article.

- (c) A timeshare registrar is guilty of a Class I felony if the timeshare registrar knowingly or recklessly fails to record or cause to be recorded a timeshare instrument as required by this Article. A person responsible as general partner, corporate officer, joint venturer, or sole proprietor of the developer of a timeshare project is guilty of a Class I felony if the person intentionally allows the offering for sale or the sale of timeshare to purchasers without first designating a timeshare registrar.
- (d) The developer shall designate for each timeshare program and other locations where timeshares are sold or offered for sale a program broker. The program broker shall act as supervising broker for all timeshare salespersons at the timeshare program or other location and shall directly, personally, and actively supervise all such persons at the timeshare program or other locations in a manner to reasonably ensure that the sale of timeshares will be conducted in accordance with the provisions of this Chapter.

#### **§ 93A-59. Preservation of an owner's claims and defenses.**

- (a) For one year following the execution of an instrument of indebtedness for the purchase of a timeshare uses, the owner may assert against the developer, assignee of the developer, or other holder of the instrument of indebtedness, any claims or defenses available against the developer, and the owner may not waive the right to assert these claims or defenses in connection with a timeshare purchase. Any recovery by the owner on a claim asserted against an assignee of the developer or other holder of the instrument of indebtedness shall not exceed the amount paid by the developer under the instrument. A holder shall be the person or entity with the rights of a holder as set forth in G.S. 25-3-301.
- (b) Every instrument of indebtedness for the purchase of a timeshare shall set forth in conspicuous type the following provision in substantially the following form:

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**"NOTICE: FOR A PERIOD OF ONE YEAR FOLLOWING THE EXECUTION OF THIS INSTRUMENT OF INDEBTEDNESS, ANY HOLDER OF THIS INSTRUMENT OF INDEBTEDNESS IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE OWNER COULD ASSERT AGAINST THE DEVELOPER OF THE TIMESHARE. RECOVERY BY THE OWNER SHALL NOT EXCEED AMOUNTS PAID BY THE OWNER UNDER THIS INSTRUMENT."**

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#### **§ 93A-60. Substantial compliance.**

If a developer or managing entity has otherwise substantially complied with this Article, any nonmaterial errors or omissions shall not be the basis for any claims or defenses assert-

ed by the purchaser; provided, however, that for purposes of this section, the developer or managing entity shall have the burden of proof.

#### **§ 93A-61. Management.**

- (a) For each timeshare program, the developer shall provide for a managing entity, which shall be either the developer, a third-party management firm, or timeshare owners' association.
- (b) The managing entity may not furnish the name, address, electronic mail address, or contact information of any owner to any person, including any other owner or authorized agent of an owner, unless the owner whose name, address, electronic mail address, or contact information is requested first approves the disclosure in writing. The managing entity shall maintain among its records and provide to the Commission upon request a complete list of the names and addresses of all owners in the timeshare program. The managing entity shall update this list at least quarterly. The managing entity may not publish this owners' list or provide a copy of it to any owner or to any third party other than the Commission. However, the managing entity shall mail to those owners listed on the owners' list materials provided by any owner, upon the written request of that owner, if the purpose of the mailing is to advance legitimate business of the timeshare program, including, but not limited to, a proxy solicitation for any purpose, including the recall of one or more directors elected by the owners or the discharge of the management firm. The managing entity shall be responsible for determining the appropriateness of any requested mailing. The owner who requests the mailing must reimburse the managing entity in advance for the actual, reasonable costs in performing the mailing. A mailing requested for the purpose of advancing legitimate business of the timeshare program shall occur within 30 days after receipt of a request from an owner.
- (c) The predecessor in interest, or a transfer service provider for the predecessor in interest, shall deliver to the managing entity a copy of the timeshare instrument, which shall be a copy of the recorded timeshare instrument if the timeshare is a timeshare estate, together with the name and mailing address of the successor in interest within 15 days after the date of transfer, and after such delivery, the successor in interest shall be listed by the managing entity as the owner of the timeshare on the books and records. The managing entity shall not be liable to any person for any inaccuracy in the books and records arising from the failure of the predecessor in interest to timely and correctly notify the managing entity of the name and mailing address of the successor in interest.
- (d) The managing entity shall make the books and records reasonably available for inspection by any owner or

the authorized agent of an owner. The managing entity may charge the owner a reasonable fee for copying or providing the requested information, however, any owner or agent of an owner shall be permitted to personally inspect and examine the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of those records. All books and financial records of the timeshare program must be maintained in accordance with generally accepted accounting practices. The managing entity may require any owner or authorized agent of an owner to execute and provide a reasonable confidentiality or nondisclosure agreement prohibiting the disclosure of books and records to non-owners.

- (e) All notices or other information sent by a managing entity may be delivered to an owner by electronic mail, provided that the owner first consents electronically to the use of electronic mail for notice purposes. The consent to receive notice by electronic mail is effective until revoked by the owner.
- (f) An officer, director, or agent of a timeshare owners' association shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the interests of the timeshare owners' association. An officer, director, or agent of a timeshare owners' association shall be exempt from liability for monetary damages unless the officer, director, or agent breached or failed to perform their duties and the breach of, or failure to perform, those duties constitutes a violation of criminal law, constitutes a transaction from which the officer, director, or agent derived an improper personal benefit, either directly or indirectly, or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- (g) If a state of emergency is declared pursuant to the North Carolina Emergency Management Act or by any governmental agency with authority in the locale in which timeshare property is located, then the following apply:
  - (1) The managing entity may, but is not required to, exercise the following powers:
    - a. Conduct board meetings and owner meetings with notice given in any practicable manner, including publication, radio, conspicuous posting on the timeshare property, electronic means, or any other means the board deems reasonable under the circumstances. Notice of board decisions may be communicated in the same manner as notice of the meetings is given.

- b. Cancel and reschedule any timeshare owners' association meeting.
- c. Name as assistant officers persons who are not directors of the board. Named assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the timeshare owners' association.
- d. Relocate the managing entity's principal office or designate alternative principal offices or conduct business remotely.
- e. Enter into agreements with government agencies to assist in responding to the emergency.
- f. Implement an emergency plan for which a state of emergency is declared. The emergency plan may include, but is not limited to, shutting down all or any portion of timeshare units, amenities, or timeshare projects, including shutting off systems or utilities.
- g. Determine that all or any portion of the timeshare property is unavailable for entry or occupancy by owners or any other person to protect the health, safety, or welfare of owners or persons or to properly respond to the emergency. Should any person enter or occupy the timeshare property when the board has declared the timeshare property is unavailable for entry or occupancy for those persons, and without board approval, the board and the association shall be immune from liability or injury to persons or property arising from that failure or refusal.
- h. Require occupancy of timeshare units to be aggregated in certain parts of the timeshare property even if other parts of the timeshare property are habitable.
- i. Require the evacuation of all or any portion of the timeshare property in the event of a mandatory evacuation order or in order to respond to the emergency. Should any person fail or refuse to evacuate the timeshare property where the board has required evacuation, the board and the association shall be immune from liability or injury to persons or property arising from that failure or refusal.
- j. Make a determination whether all or any portion of the timeshare property can be safely inhabited or occupied; provided, however, any determination is not conclusive as to any determination of habitability pursuant to applicable law or the timeshare declaration.

- k. Temporarily suspend or modify rules and regulations concerning the physical use of all or any portion of the timeshare property.
  - l. Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus or disease notwithstanding timeshare declaration provisions regarding owner approval of changes to the timeshare units or amenities.
  - m. Regardless of any provision to the contrary and even if such authority does not specifically appear in the timeshare declaration, levy special assessments without a vote of the owners.
  - n. Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs, to respond to the emergency, or to carry out the duties of the association when operating funds are insufficient.
  - o. Temporarily suspend or modify timeshare program reservation system rules and regulations to manage owner reservations and use rights in the best interests of the owners as a whole, including cancelling existing reservations, extending expiring use rights, or suspending or modifying priority periods and priority reservation rights. A temporary suspension or modification shall be permitted even if owners must compete for reservation and use of timeshare periods and timeshare units on a more than one-to-one use night to use right ratio.
  - p. Toll the expiration of any claim of lien arising under G.S. 93A-62(d)(4) for the duration of the state of emergency, provided that the beginning and ending dates for each period of tolling are recorded in the public records and the owner is notified of the end of the tolling period.
  - q. Modify or suspend assessment and collection requirements and activity, including deferring due dates or waiving late charges and interest, provided that all owners are treated equally as of the date of modification and suspension, and owners who have previously made timely payments have their future assessments adjusted in a manner that fairly compensates them for making timely payments in advance of the modification or suspension.
- (2) The emergency powers authorized and exercised shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the managing entity and the owners and reasonably necessary to mitigate further damage and make emergency repairs, notwithstanding the termination of the state of emergency. Further, the managing entity may take any actions that are necessary to implement the exercised powers even if the implementation takes place after the termination of the state of emergency, provided that the implementation is necessary and does not go beyond the scope of the exercised power.
- (3) In the exercise of emergency powers, the managing entity may take into account the economic consequences of the emergency to the owners; however, the managing entity shall give greater weight to the health, safety, and welfare of the managing entity and the owners and mitigation of further damage and adhere to the business judgment rule in balancing economic considerations with owner opportunity to enjoy the use of the timeshare property.
  - (4) In the exercise of the emergency powers, the managing entity will be deemed to have met any duty of care if the managing entity has relied upon advice of emergency management officials or upon the advice of licensed professionals with applicable expertise.

**§ 93A-62. Delinquent assessments; developer guarantee.**

- (a) Delinquent assessments may bear interest at the highest rate permitted by law or at some lesser rate established by the managing entity. In addition to interest, the managing entity may charge a reasonable administrative late fee for each delinquent assessment. Any costs of collection, including reasonable collection agency fees and reasonable attorney's fees, incurred in the collection of a delinquent assessment shall be paid by the owner and shall be secured by a lien in favor of the managing entity upon the timeshare with respect to which the delinquent assessment has been incurred.
- (b) The managing entity may deny the use of the timeshare units or facilities, including the denial of the right to make a reservation or the cancellation of a confirmed reservation for timeshare periods, to any owner who is delinquent in the payment of any assessments made by the managing entity against the owner for common expenses, in accordance with the following:
  - (1) The managing entity must, no less than 30 days after the date the assessment is due, notify the owner in writing of the total amount of any delinquency which then exists, including any accrued interest and late charges permitted to be imposed under the terms of the timeshare program or by law and including a per diem amount. The notice shall be sent to the owner at the owner's known address as recorded in the books and records of

the timeshare program.

- (2) The notice shall clearly state that the owner will not be permitted to use the owner's timeshare, that the owner will not be permitted to make a reservation in the timeshare program's reservation system, or that any confirmed reservation may be canceled until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist.
- (3) The notice shall be effective to bar the use of the owner and those claiming use rights under the owner, including the owner's guests, lessees, and persons receiving use rights in the timeshare through an exchange program; provided, however, that (i) a managing entity desiring to deny the use of the timeshare to persons receiving use rights in the delinquent owner's timeshare through an exchange program that has an affiliation agreement with the managing entity shall notify the affiliated exchange company in writing of the denial of use at the time that the notice was sent to the owner and (ii) any person claiming through the affiliated exchange program who has received a confirmed assignment of the delinquent owner's use rights from the affiliated exchange company prior to the expiration of 48 hours after the receipt by the affiliated exchange company of the written notice from the managing entity shall be permitted by the managing entity to use the owner's use rights.
- (4) Any costs reasonably incurred by the managing entity in connection with its compliance with the requirements of this section may be assessed by the managing entity against the delinquent owner and collected in the same manner as if those costs were common expenses of the timeshare program allocable solely to the delinquent purchaser.
- (5) A managing entity may not enforce the denial of use against any one owner or group of owners without similarly enforcing it against all owners, including all developers.
- (c) In addition to the denial of use pursuant to subsection (b) of this section, the managing entity may give further notice to the delinquent owner that the managing entity may rent the delinquent owner's timeshare, or any use rights appurtenant thereto, in accordance with the following:
  - (1) A further notice of intent to rent must be given no less than 30 days after the date the assessment is due and must be delivered to the purchaser in the manner required for notices under subsection (b) of this section.
  - (2) The notice shall state that unless the owner satisfies the delinquency in full, or unless the owner produces satisfactory evidence that the delinquency does not exist, the purchaser will be bound by the terms of any rental contract entered into by the managing entity with respect to the owner's timeshare or appurtenant use rights.
- (3) The notice shall state that the owner will remain liable for any difference between the amount of the delinquency and the net amount produced by the rental contract and applied against the delinquency, and the managing entity shall not be required to provide any further notice to the owner regarding any residual delinquency.
- (4) The managing entity's efforts to secure a rental shall not commence on a date earlier than 10 days after the date of the notice of intent to rent.
- (5) The managing entity must apply the proceeds of any rental, net of any rental commissions, cleaning charges, travel agent commissions, or any other commercially reasonable charges reasonably and usually incurred by the managing entity in securing rentals to the delinquent owner's account.
- (6) A managing entity may make a reasonable determination regarding the priority of rentals of timeshares and, if the delinquent owner whose timeshare is rented cannot be specifically determined due to the structure of the timeshare program, the managing entity may allocate any net rental proceeds in any reasonable manner.
- (7) In securing a rental, the managing entity shall not be required to obtain the highest nightly rental rate available, nor any particular rental rate, and the managing entity shall not be required to rent the entire timeshare or appurtenant rights; however, the managing entity must use reasonable efforts to secure a rental that is commensurate with other rentals of similar timeshares or use rights generally secured at that time.
- (d) For timeshare estates located in this State, the managing entity shall have a lien on a timeshare for any assessment levied against that timeshare from the date such assessment becomes due. The managing entity shall also have a lien on a timeshare estate of any owner for the cost of any maintenance, repairs, or replacement resulting from an act of the owner or the owner's guest or lessee that results in damage to the timeshare property. All of the following apply to a lien imposed under this section:
  - (1) The managing entity, or the holder of the lien, may bring a judicial action in its name to foreclose the lien in the nature of an action to foreclose a mortgage or deed of trust and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. As an alternative to initiating a judicial action, the managing entity may initiate a nonjudicial foreclosure proceeding to foreclose

the assessment lien.

- (2) The lien is effective from the date of and shall relate back to the recording of the original timeshare declaration, or, in the case of lien on a timeshare located in a phase timeshare program, the last to occur of the recording of the original timeshare declaration or amendment creating the timeshare. However, as to first mortgages of record, the lien is effective from and after filing of the claim of lien in the office of the clerk of superior court in the county where the timeshare estate is located.
- (3) The claim of lien shall state the name of the timeshare program and identify the timeshare for which the lien is effective, state the name of the owner, state the assessment amount due, and state the due dates. The claim of lien shall be signed and acknowledged by an officer or agent of the managing entity or the holder.
- (4) The lien shall expire upon the earlier of:
  - a. The date it is satisfied.
  - b. Five years from the date the claim of lien is filed unless an action to enforce the lien is commenced within that time.
- (5) A claim of lien for assessments may include assessments which are due when the claim is recorded and all assessments that subsequently become due and are delinquent. Upon full payment, the person making the payment is entitled to receive a satisfaction of the lien.
- (6) A judgment in any action or suit brought to foreclose the claim of lien may include costs and reasonable attorney's fees for the substantially prevailing party.
- (e) A successor in interest, regardless of how the timeshare has been acquired, including a purchaser at a judicial sale or foreclosure trustee sale, is jointly and severally liable with their predecessor in interest for all unpaid assessments against the predecessor up to the time of transfer of the timeshare to a successor, without prejudice to any right a successor in interest may have to recover from their predecessor in interest any amounts assessed against the predecessor and paid by the successor; provided, however, a first mortgagee or its successor or assignee who acquires title to a timeshare as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the timeshare or chargeable to the previous owner which came due prior to acquisition of title by the first mortgagee.
- (f) If the developer agrees to guarantee the level of assessments for the timeshare program for any period of time, the developer may be excused from the payment of the developer's share of the assessments that

otherwise would have been assessed against developer-owned timeshares during the guarantee period, provided that the developer guarantees that (i) during the guarantee period the assessments against owner timeshares will not increase over the dollar amount stated in the adopted, good-faith budget of the timeshare program and (ii) the developer will pay any amount by which all common expenses incurred during the guarantee period exceed the total revenues of the timeshare program during the guarantee period.

#### **§ 93A-63. Reservation systems.**

- (a) The developer shall describe in the timeshare declaration any creation of a reservation system and shall establish rules and regulations for its operation. In establishing these rules and regulations, the developer shall take into account the location and anticipated relative use demand of each timeshare unit and timeshare project component site that is included in the timeshare program and, the developer shall use its best efforts, in good faith and based upon all reasonably available evidence under the circumstances, to further the best interests of the owners as a whole with respect to their opportunity to use and enjoy the timeshare units.
- (b) The rules and regulations shall also provide for periodic adjustment or amendment of the reservation system by the reservation system operator from time to time in order to respond to actual owner use patterns and changes in owner use demand for the timeshare units existing at that time within the timeshare program. In addition to any other rights granted by the rules and regulations of the timeshare program, the reservation system operator is authorized to manage the reservation and use of the timeshare program using those processes, analyses, procedures, and methods that are in the best interests of the owners as a whole to efficiently manage the timeshare program.
- (c) The reservation system operator shall have the right to forecast anticipated reservation and use of the timeshare units, including the right to take into account current and previous reservation and use of the timeshare units, information about events that are scheduled to occur, seasonal use patterns, and other pertinent factors that affect the reservation or use of the timeshare program.
- (d) The reservation system operator is authorized to reserve timeshare periods and timeshare units, in the best interests of the owners as a whole, for the purposes of depositing any reserved use with an affiliated exchange program or renting any reserved timeshare periods or timeshare units in order to facilitate the use or future use of the timeshare period or timeshare units or other benefits made available through the timeshare program to owners.
- (e) If the reservation system operator is not the timeshare

owners' association, the following provisions shall apply with respect to termination of the reservation system operator's management agreement or reservation agreement:

- (1) No later than 90 days after the date of termination, or another date as set forth in the applicable management agreement or reservation agreement, the terminated reservation system operator shall transfer to the timeshare owners' association, or any designated successor reservation system operator, all relevant data held by the prior reservation system operator and related to any reservation system and any other records and information as is necessary to permit the uninterrupted operation and administration of the reservation system. However, the information required to be transferred does not include private information of the terminated reservation system operator that is not directly related to operation and management of the timeshare program.
- (2) All reasonable costs incurred by the terminated reservation system operator in effecting the transfer of information shall be reimbursed to the terminated reservation system operator as a common expense of the timeshare program within 10 days after the completed transfer of the information.
- (3) Nothing contained in this section shall preclude a reservation system operator from providing in its agreement with the timeshare owners' association or in the timeshare declaration that the reservation system operator owns the reservation system and that the reservation system operator shall continue to own the reservation system in the event that it is terminated.

**§ 93A-64. Multisite timeshare program additions, substitutions, and deletions.**

- (a) With respect to addition of timeshare units, amenities, or timeshare projects to the multisite timeshare program, the timeshare declaration must provide for the following:
  - (1) The basis upon which new timeshare units, amenities, or timeshare projects may be added, by whom additions may be made, and the fiscal impact, if any, of any additions on the owners.
  - (2) The extent, if any, to which owners will have the right to consent to any proposed additions.
  - (3) The person authorized to make additions during the term of the multisite timeshare program must comply with the one-to-one use night to use right ratio and the requirements of G.S. 93A-63 in ascertaining the desirability of the proposed addition and any impact of the proposed addition upon the demand for and availability of existing

timeshare units, amenities, or timeshare projects.

- (b) With respect to substitution of timeshare units, amenities, or timeshare projects for existing timeshare units, amenities, or timeshare projects in a multisite timeshare program, the timeshare declaration must provide for the following:
  - (1) The basis upon which timeshare units, amenities, or timeshare projects may be substituted for existing timeshare units, amenities, or timeshare projects, by whom substitutions may be made, and the fiscal impact, if any, of any substitutions on the owners.
  - (2) The replacement timeshare units, amenities, or timeshare projects must provide owners with an opportunity to enjoy a substantially similar or improved vacation experience as compared to the experience available at the replaced timeshare units, amenities, or timeshare projects. In determining whether the replacement timeshare units, amenities, or timeshare projects will provide a substantially similar or improved vacation experience, all relevant factors may be considered, including, but not limited to, some or all of the following: size; capacity; furnishings; maintenance; location, including geographic, topographic, and scenic considerations; demand and availability for owner use; and recreational capabilities.
  - (3) If a timeshare owned by the owner in a multisite timeshare program is a timeshare estate in a specific timeshare unit, no substitution may be made of that timeshare unit without the approval of that owner and all other owners of timeshare estates in that timeshare unit.
  - (4) If the timeshare declaration provides that the developer, acting unilaterally, or a managing entity under common ownership or control with the developer is the person who is authorized to make substitutions, the developer or managing entity may not substitute available timeshare units in the multisite timeshare program in a given calendar year pursuant to this subsection if the amount of the substituted timeshare units provides more than ten percent (10%) of the total annual use availability in the multisite timeshare program calculated in seven-day increments.
  - (5) If the timeshare declaration provides that the managing entity is the person authorized to make substitutions, and the managing entity is not under common ownership or control with the developer, the managing entity may not substitute available timeshare units in the multisite timeshare program in a given calendar year pursuant to this subsection if the amount of the substituted timeshare units provides more than twenty-five percent (25%) of the total annual use availability

in the multisite timeshare program calculated in seven-day increments.

- (6) If the owners have the right to consent to any proposed substitutions, and the person authorized to make substitutions receives, within 21 days after the date of the notice of substitution required by this subsection, a written objection to the proposed substitution from at least ten percent (10%) of all owners in the multisite timeshare program, a meeting of the owners must be conducted by the managing entity within 30 days after the end of the 21-day period. The proposed substitution is ratified unless it is rejected by a majority of owners voting in person or by proxy at the meeting, provided that at least twenty-five percent (25%) of all owners cast votes.
  - (7) The person authorized to make substitutions may make unlimited substitutions in a given year if a proposed substitution is approved in advance by a majority of owners of the multisite timeshare program voting in person or by proxy at a meeting called for that purpose, provided that at least twenty-five percent (25%) of the total number of owners cast votes.
  - (8) The person authorized to make substitutions shall notify all owners of the multisite timeshare program in writing of the decision to make a substitution. This notice must meet all of the following requirements:
    - a. The notice must be given at least six months in advance of the date that the proposed substitution will occur.
    - b. The notice must state the last day after the end of the six-month period on which reservations will be accepted from owners for use of the existing timeshare units that will be replaced.
    - c. The notice must state that owners shall have 21 days after the date of the notice of substitution to file a written objection with the person authorized to make substitutions.
  - (9) The person authorized to make substitutions may remove existing timeshare units for substitution only after those timeshare units have no pending purchaser use reservations.
  - (10) The person authorized to make substitutions must comply with the one-to-one use night to use right ratio and the requirements of G.S. 93A-63 in ascertaining the desirability of the proposed substitution and its impact upon the demand for and availability of existing timeshare units, amenities, or timeshare projects.
- (c) With respect to deletion of timeshare units, amenities, or timeshare projects, the timeshare declaration must provide for the following:

- (1) If the deletion is as a result of a casualty, the following apply:
  - a. The timeshare declaration must provide for casualty insurance for the timeshare units or amenities in an amount equal to the replacement cost of those timeshare units or amenities. The timeshare declaration must also provide that in the event of a casualty that results in timeshare units, amenities, or timeshare projects being unavailable for use by owners, the managing entity shall notify all affected owners of the unavailability of use within 30 days after the event of casualty.
  - b. The timeshare declaration must also provide for the application of any insurance proceeds arising from a casualty to either the replacement or acquisition of additional similar timeshare units or to the removal of owners from the multisite timeshare program so that owners will not be competing for available timeshare units or amenities on a greater than one-to-one use night to use right ratio.
  - c. If the timeshare instrument does not provide for business income insurance, or if it is unavailable, or if the declaration permits the developer, the managing entity, or the owners to elect not to reconstruct after casualty under certain circumstances or to secure replacement timeshare units in lieu of reconstruction, owners may temporarily compete for available accommodations on a greater than one-to-one use night to use right ratio. The decision whether or not to reconstruct shall be made as promptly as possible under the circumstances.
  - d. Any replacement of timeshare units, amenities, or timeshare projects must comply with the one-to-one use night to use right ratio and the requirements of G.S. 93A-63 in ascertaining the desirability of the proposed addition and its impact upon the demand for and availability of existing timeshare units, amenities, or timeshare projects.
- (2) If the deletion is as a result of an eminent domain proceeding, the following apply:
  - a. The timeshare declaration must provide for the application of any proceeds arising from a taking under eminent domain proceedings to either the replacement or acquisition of additional similar timeshare units or to the removal of owners so that owners will not be competing for available timeshare units on a greater than one-to-one use night to use right requirement ratio.
  - b. Any replacement of timeshare units, ame-

nities, or timeshare projects must comply with the one-to-one use night to use right ratio and the requirements of G.S. 93A-63 in ascertaining the desirability of the proposed addition and its impact upon the demand for and availability of existing timeshare units, amenities, or timeshare projects.

- (3) The timeshare declaration may provide that timeshare units, amenities, or timeshare projects will be deleted upon the expiration of the term of their availability or as otherwise provided in the timeshare declaration. However, the timeshare declaration must also provide that if a timeshare unit is deleted in this manner, a sufficient number of owners will also be deleted, or a sufficient number of substitute timeshare units will be substituted for the deleted timeshare units, so as to maintain no greater than a one-to-one use night to use right ratio.

#### **§ 93A-65. Resale purchase contracts; prohibition against advance listing fee.**

- (a) A consumer timeshare reseller, or any agent of a reseller, must use a resale purchase contract which must contain all of the following:

- (1) An identification of the timeshare.
- (2) The name and address of the timeshare program and of the managing entity of the timeshare program.
- (3) Immediately prior to the disclosure required by subdivision (5) of this subsection, a statement in conspicuous type in substantially the following form:

"The current year's assessment allocable to the timeshare you are purchasing is [insert amount]. This assessment, which may be increased from time to time by the managing entity of the timeshare program, is payable in full each year on or before [insert date]. This assessment [includes/does not include] yearly real estate taxes, which [are/are not] billed and collected separately. Each owner is personally liable for the payment of assessments, and failure to timely pay these assessments may result in restriction or loss of your use or ownership rights. There are many important documents relating to the timeshare program which you should review prior to purchasing a timeshare, including the timeshare declaration, the timeshare owners' association articles and by-laws, the current year's operating and reserve budgets, and any rules and regulations affecting the use of timeshare units and amenities."

- (4) If there are any delinquent assessments or real estate taxes outstanding with respect to the timeshare, the following statement must be included

in the statement described in subdivision (3) of this subsection:

"A delinquency in the amount of [insert amount] for unpaid assessments or real estate taxes currently exists with respect to the timeshare you are purchasing, together with a per diem charge of [insert amount] for interest and late charges."

- (5) A statement in conspicuous type located immediately prior to the space in the contract reserved for the signature of the purchaser in the following form:

"You may cancel this contract without any penalty or obligation within five days after the date you sign this contract. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to the seller at [insert address]. Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing before expiration of your five-day cancellation period is prohibited."

- (6) The year in which the purchaser will first be entitled to reserve, use, or occupy a timeshare unit.

- (b) If a resale purchase contract is not used or does not comply with the provisions of this section, the transaction shall be voidable at the option of the purchaser for a period of one year after the date of transfer.
- (c) It is unlawful for any resale broker to collect any advance fee for the listing of any timeshare.

#### **§ 93A-66. Record keeping by resale service providers, transfer service providers, and lead dealers.**

Resale service providers, lead dealers, and transfer service providers shall maintain the following records for a period of three years from the date each piece of personal contact information is obtained:

- (1) A copy of all pieces of personal contact information obtained.
- (2) Resale service providers, transfer service providers, and lead dealers who receive personal contact information from other lead dealers shall maintain records disclosing:
  - a. The full name, address, and telephone number of the lead dealer from which the personal contact information was obtained.
  - b. The date, time, and place of the transaction at which the personal contact information was obtained, along with the amount of consideration paid and a signed receipt from the lead dealer or copy of a canceled check.
- (3) Resale service providers, transfer service providers, and lead dealers who obtained personal contact information by directly researching and as-

sembling such information and did not obtain such information from a lead dealer shall maintain records disclosing:

- a. A complete written description of the source from which each piece of personal contact information was obtained.
- b. The methodologies used for researching and assembling the personal contact information.
- c. The date, time, and place at which the piece of personal contact information was obtained.
- d. The full name, address, and telephone number of each person who performed the work to obtain the piece of personal contact information.

#### **§ 93A-67. Resale service providers.**

- (a) Before engaging in resale advertising services, a resale service provider must provide to the consumer timeshare reseller in writing (i) a description of any fees or costs related to the services that the consumer timeshare reseller, or any other person, is required pay to the resale service provider or to any third party and (ii) a description of when the fees or costs are due.
- (b) A resale service provider may not engage in real estate broker activities described in Article 1 of this Chapter without being the holder of an active license in accordance with Article 1 of this Chapter.
- (c) In the course of offering resale advertising services, a resale advertiser may not do any of the following:
  - (1) State or imply that the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale timeshare for sale or rent by the consumer timeshare reseller.
  - (2) State or imply to a consumer timeshare reseller, directly or indirectly, that the resale advertiser has identified a person interested in buying or renting the timeshare resale interest without providing the name, address, and telephone number of the represented interested resale purchaser.
  - (3) State or imply to a consumer timeshare reseller, directly or indirectly, that sales or rentals have been achieved or generated as a result of its advertising services unless the resale advertiser, at the time of making that representation, possesses and is able to provide documentation to substantiate the statement or implication made to the consumer timeshare reseller. In addition, to the extent that a resale advertiser states or implies to a consumer timeshare reseller that the resale advertiser has sold or rented any specific number of timeshares, the resale advertiser must also provide the consumer timeshare reseller the ratio or per-

centage of all the timeshares that have resulted in a sale versus the number of timeshares advertised for sale by the resale advertiser for each of the previous two calendar years if the statement or implication is about a sale or sales, or the ratio or percentage of all the timeshares that have actually resulted in a rental versus the number of timeshares advertised for rental by the resale advertiser for each of the previous two calendar years if the statement or implication is about a rental or rentals.

- (4) State or imply to a consumer timeshare reseller that the timeshare has a specific resale value.
- (5) Make or submit any charge to a consumer timeshare reseller's credit card account, make or cause to be made any electronic transfer of consumer timeshare reseller funds, or collect any payment from a consumer timeshare reseller that exceeds an aggregate total amount of seventy-five dollars (\$75.00) or more in any 12-month period unless the following have occurred:
  - a. The consumer timeshare reseller has been provided a copy of the terms and conditions of the contract for resale advertising services and the consumer timeshare reseller has agreed to those terms and conditions by mail or electronic transmission.
  - b. The resale advertiser has received a written contract complying in all respects with this section and that has been signed by the consumer timeshare reseller.
- (6) Engage in any resale advertising services for compensation or other valuable consideration without first obtaining a written brokerage agreement to provide resale advertising services signed by the consumer timeshare reseller. Notwithstanding any other law to the contrary, the contract must be printed in at least 12-point type and must contain the following information:
  - a. The name, address, telephone number, and internet address, if any, of the resale advertiser and a mailing address and email address to which a contract cancellation notice may be delivered at the consumer timeshare reseller's election.
  - b. A complete description of all resale advertising services to be provided, including, but not limited to, details regarding the publications, internet sites, and other media in or on which the consumer resale timeshare will be advertised; the dates or time intervals for such advertising or the minimum number of times such advertising will be run in each specific medium; the itemized cost to the consumer timeshare reseller of each re-

sale advertising service to be provided; and a statement of the total cost to the consumer timeshare reseller of all resale advertising services to be provided.

- c. A statement printed in conspicuous type immediately preceding the space in the contract provided for the consumer timeshare reseller's signature in substantially the following form:

"Timeshare Owner's Right of Cancellation  
[Insert name of resale advertiser] will provide resale advertising services pursuant to this contract. If the resale advertiser represents that they have identified a person who is interested in purchasing or renting your timeshare, then the resale advertiser must provide you with the name, address, and telephone number of such represented interested resale purchaser.

You have an unwaivable right to cancel this contract for any reason within five days after the date you sign this contract. If you decide to cancel this contract, you must notify [insert name of resale advertiser] in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to [insert resale advertiser's physical address] or to [insert resale advertiser's email address]. Your refund will be made within 20 days after receipt of notice of cancellation or within five days after receipt of funds from your cleared check, whichever is later.

You are not obligated to pay [insert name of resale advertiser] any money unless you sign this contract and return it to the retail advertiser.

Important: Before signing this contract, you should carefully review your original purchase document and other timeshare program documents to determine whether the developer has reserved a right of first refusal or other option to purchase your timeshare or to determine whether there are any restrictions or special conditions applicable to the resale or rental of your timeshare."

- d. A statement that any resale contract entered into by or on behalf of the consumer timeshare reseller must comply in all respects with G.S. 93A-65, including the provision of a five-day cancellation period for the prospective consumer resale purchaser.
- (7) Fail to honor any cancellation notice sent by the consumer timeshare reseller within five days after the date the consumer timeshare reseller signs the

contract for resale advertising services.

- (8) Fail to provide a full refund of all money paid by a consumer timeshare reseller within 20 days after receipt of notice of cancellation or within five days after receipt of funds from a cleared check, whichever is later.
- (d) If a resale service provider uses a contract for resale advertising services that fails to comply with the requirements of this section, the contract shall be voidable at the option of the consumer timeshare reseller for a period of one year after the date it is executed by the consumer timeshare reseller.
- (e) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service provider to supervise, manage, and control all aspects of the offering of resale advertising services by any agent or employee of the resale service provider. Any violation of this section that occurs during that offering shall be deemed a violation by the resale service provider as well as by the person actually committing the violation.
- (f) Providing resale advertising services with respect to a consumer resale timeshare in a timeshare property located or offered within this State, or in a multisite timeshare program registered or required to be registered to be offered in this State, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this State.
- (g) If a resale service provider also offers timeshare transfer services, the resale service provider must comply with G.S. 93A-68.
- (h) Any violation of this section is an unfair or deceptive act or practice prohibited by G.S. 75-1.1.

#### **§ 93A-68. Timeshare transfer services.**

- (a) In the course of advertising, marketing, promoting, offering, sale, or performance of any timeshare transfer services, no person shall do any of the following:
- (1) Engage in any timeshare transfer services for compensation, or the expectation of receiving compensation, without first obtaining a written timeshare transfer services agreement signed by the consumer timeshare reseller that complies with this section.
  - (2) Fail to provide both the consumer timeshare reseller and the independent escrow agent required by this section with an executed copy of the timeshare transfer services agreement.
  - (3) Advise, suggest, or assist with advising or suggesting that a consumer timeshare reseller cease making any payment of assessments, ad valorem real estate taxes, or any other sums imposed against the consumer resale timeshare, or any payment of

any amounts due to a mortgagee or other lienor under a mortgage or other lien or encumbrance secured by the consumer resale timeshare.

- (4) Represent, expressly or by implication, that (i) a consumer timeshare reseller cannot or should not contact or communicate with the developer, managing entity, exchange company, mortgagee, or lienor or (ii) the developer, managing entity, exchange company, mortgagee, or lienor is prohibited from contacting or communicating with the consumer timeshare reseller.
  - (5) Offer, obtain, negotiate, arrange, or assist with offering, obtaining, negotiating, arranging a timeshare transfer service that disposes of the consumer resale timeshare through foreclosure of the consumer resale timeshare for (i) the nonpayment of assessments, ad valorem real estate taxes, or any other sums imposed against the consumer resale timeshare or (ii) nonpayment of amounts due to a mortgagee or other lienor under a mortgage or other lien encumbrance secured by the consumer resale timeshare.
  - (6) Charge or accept a fee for obtaining, negotiating, arranging, or assisting with obtaining, negotiating, or arranging the voluntary relinquishment of a consumer resale timeshare to a managing entity in lieu of payment of assessments or ad valorem real estate taxes.
- (b) A consumer timeshare reseller has the right to cancel the timeshare transfer services agreement until midnight of the fifth day after the execution of the timeshare transfer services agreement. The consumer timeshare reseller may not waive this right of cancellation. Any oral or written declaration or instrument that purports to waive this right of cancellation is void. Cancellation under this section is without penalty, and the refund of all monies received by the transfer service provider shall be made within 20 days of demand therefor by the consumer timeshare reseller or within five days after receipt of cleared funds from the consumer timeshare reseller, whichever is later.
- (c) Each timeshare transfer services agreement shall contain the following:
- (1) A statement that no fee, cost, or other compensation may be received by or paid to the transfer service provider before the delivery to the consumer timeshare reseller of written evidence that all promised timeshare transfer services have been performed, including:
    - a. Delivery to both the consumer timeshare reseller and the timeshare program managing entity of a copy of the recorded timeshare instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare to the

transferee, accompanied by the full name, address, and other known contact information for the transferee.

- b. Delivery to the consumer timeshare reseller of a copy of the legal document executed by the vendor or obligee evidencing the mutually agreed upon termination of the timeshare instrument or timeshare loan obligation relating to the consumer resale timeshare.
- (2) The name, address, current phone number, and current email address of the independent escrow agent required by this section.
  - (3) A specific, detailed description of each timeshare transfer service promised to be provided, including a statement of the last date by which each promised service will be fully performed, and including a statement that the transfer service provider will deliver to the consumer timeshare reseller written notice of the full performance of each timeshare transfer service, together with a copy of the legal document evidencing the completed performance of the service.
  - (4) The total cost to the consumer timeshare reseller of each timeshare transfer service promised to be provided pursuant to subdivision (3) of this subsection together with an itemized list of all of the fees and costs that comprise the total cost of that service.
  - (5) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a timeshare transfer service, including the circumstances under which a guaranteed or nonguaranteed, full or partial refund will be granted.
  - (6) A statement in conspicuous type that nonpayment of a timeshare loan obligation or assessment obligation may lead to a foreclosure action or other proceeding that could result in the loss of ownership of the timeshare and negative consequences for the consumer timeshare reseller's credit and tax liability.
  - (7) A statement in substantially the following form in conspicuous type immediately preceding the space in the timeshare transfer services agreement provided for the consumer timeshare reseller's signature:

"[Insert transfer service provider name] has agreed to provide you with timeshare transfer services under this timeshare transfer services agreement. After those services have been fully performed, the transfer service provider is obligated to provide you with written notice of full performance and a copy of the recorded instrument or other legal document evidencing the transfer or assignment of your timeshare, the termination of your

timeshare contract, or the release from a timeshare loan or assessment obligation. Any fee or other compensation paid by you under this agreement before full performance by [Insert transfer service provider name] must be held in escrow by the escrow agent specified in this agreement, and the transfer service provider is prohibited from receiving any such fee or other compensation until all promised timeshare transfer services have been performed.

#### Timeshare Owner's Right of Cancellation

You have an unwaivable right to cancel this agreement for any reason within five days after the date you sign this agreement. If you decide to cancel this contract, you must notify [insert name of transfer service provider] in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to [insert name and mailing address of transfer service provider] or to [insert transfer service provider's email address]. Your refund will be made within 20 days after receipt of notice of cancellation or within five days after receipt of funds from your cleared check, whichever is later.

**IMPORTANT:** It is recommended that you contact your developer, managing entity, mortgagee, or lienor before signing this agreement. Your developer, management entity, mortgagee, or lienor may be willing to negotiate a payment plan, restructure your debt obligation, or accept the transfer of your timeshare free of charge."

- (d) If the timeshare transfer services to be provided include relief to be obtained from the consumer timeshare reseller's managing entity, mortgagee, or lienor, the timeshare transfer service provider may not do the following:

- (1) Request or receive payment of any fee or other consideration until the consumer timeshare reseller has executed a written agreement between the consumer timeshare reseller and the consumer timeshare reseller's managing entity, mortgagee, or lienor incorporating the offer of relief the timeshare transfer service provider obtained from the managing entity, mortgagee, or lienor.
- (2) Fail to disclose, on a separate page, in conspicuous type, substantially the following statement at the time the timeshare transfer service provider furnishes the consumer timeshare reseller with the written agreement specified in subsection (c) of this section, the following:

#### "Important Notice

This is an offer of relief we obtained from your [insert name of managing entity, mortgagee, or lienor]. You may accept or reject the offer. If you reject the offer, you do not have to pay us for this

service. If you accept the offer, you will have to pay us [insert total amount] for this service."

- (e) Before entering into any timeshare transfer services agreement, a person providing timeshare transfer services shall establish an escrow account with an independent escrow agent for the purpose of protecting the funds or other property of consumer timeshare resellers required to be escrowed by this subsection. The independent escrow agent shall maintain the escrow account only in such a manner as to be under the direct supervision and control of the independent escrow agent. The independent escrow agent shall have a fiduciary duty to each consumer timeshare reseller to maintain the escrow account in accordance with good accounting practices and to release the consumer timeshare reseller's funds or other property from escrow only in accordance with this section.
- (f) All funds that are received from or on behalf of a consumer timeshare reseller under a timeshare transfer services agreement shall be deposited into the escrow account. A fee, cost, or other compensation that is due or that will be paid to the transfer service provider must be held in the escrow account until the transfer service provider has fully complied with all of the obligations under the timeshare transfer services agreement and this section.
- (g) The funds required to be escrowed may only be released from escrow as follows:
  - (1) On the order of the transfer service provider upon presentation of an affidavit by the transfer service provider that all promised timeshare transfer services have been performed as set forth in the timeshare transfer services agreement, including delivery to both the consumer timeshare reseller and the timeshare program managing entity of either, as applicable: (i) a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare to the transferee or (ii) a copy of the legal document executed by the vendor or obligee evidencing the termination of the timeshare instrument or timeshare loan obligation relating to the consumer resale timeshare.
  - (2) To a managing entity to pay any assessments, transfer fees, or other moneys owed with respect to the consumer resale timeshare or to pay a governmental agency for the purpose of completing and perfecting the transfer.
- (h) The independent escrow agent shall retain all timeshare transfer services agreements, escrow account records, and affidavits received pursuant to this subsection for a period of five years.
- (i) A transfer service provider, an agent or third-party service provider for the transfer services provider, or an independent escrow agent who intentionally fails to

comply with the provisions of this subsection concerning the establishment of an escrow account, deposits of funds into escrow, withdrawal therefrom, and maintenance of records is guilty of a Class E felony.

- (j) The provisions of this section that apply to transfer service providers do not apply to any of the following:
  - (1) A resale broker who offers timeshare transfer services to a consumer timeshare reseller, so long as the resale broker complies in all respects with the provisions of Article 1 of this Chapter.
  - (2) An attorney who is licensed in this State and a member in good standing or a title insurer or agent licensed in this State in good standing who offers timeshare transfer services to a consumer timeshare reseller.
  - (3) A mortgagee or servicer or lienor, or agent or contractor of a mortgagee or servicer or lienor, to the extent that any of them offers timeshare transfer services to an obligor related to a mortgage, lien, or other encumbrance of a mortgagee, servicer, or lienor against the obligor's timeshare.
- (k) This section shall not apply to the transfer of ownership of a consumer resale timeshare from a consumer timeshare reseller to the developer or managing entity of that timeshare program unless and only to the extent the transfer includes the assistance of a transfer service provider.
- (l) Only an attorney licensed in this State or any person authorized to perform nonjudicial foreclosures pursuant to this Article may offer services to a consumer timeshare reseller in connection with an involuntary transfer, or proposed involuntary transfer, of a consumer resale timeshare.
- (m) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a transfer service provider to supervise, manage, and control all aspects of the offering of timeshare transfer services by any agent or employee of the transfer service provider. Any violation of this section that occurs during such offering shall be deemed a violation by the transfer service provider as well as by the person actually committing the violation.
- (n) Providing timeshare transfer services with respect to a consumer resale timeshare in a timeshare property located or offered within this State, or in a multisite timeshare program registered or required to be registered to be offered in this State, including acting as an agent or third-party service provider for a transfer service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this State.
- (o) An owner, managing entity, or developer may bring an action for injunctive relief and recover their reasonable attorneys' fees and costs against a timeshare service provider for a violation of this section.

- (p) Upon a consumer timeshare reseller's request, the developer or managing entity shall provide information regarding relinquishment or other disposition options of the consumer timeshare reseller's timeshare available to the timeshare reseller through the developer or managing entity, if available.
- (q) Any violation of this section is an unfair or deceptive act or practice prohibited by G.S. 75-1.1.

#### **§ 93A-69. Timeshare program extensions.**

- (a) Unless the timeshare declaration specifically provides a lower percentage, the vote or written consent, or both, of at least sixty-six percent (66%) of all eligible voting interests present in person or by proxy at a duly noticed, called, and constituted meeting of the owners may, at any time, extend the term of the timeshare program. If the term of a timeshare program is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare declaration continue in full force to the same extent as if the extended termination date of the timeshare program were the original termination date of the timeshare program.
- (b) Unless the timeshare declaration specifically provides for a lower quorum, the quorum for the timeshare owners' association meeting to extend the timeshare program is fifty percent (50%) of all eligible voting interests in the timeshare program.
- (c) The owners' association meeting held pursuant to subsection (a) of this section may be held at any time before the termination of the timeshare program.
- (d) The managing entity may determine that any voting interest that is delinquent in the payment of more than two years of assessments is ineligible to vote on any extension of the timeshare program unless such delinquency is paid in full before the vote.
- (e) A proxy for a vote to extend a timeshare program pursuant to this section is valid for up to three years and is revocable unless the proxy states it is irrevocable.
- (f) If an extension vote or consent pursuant to this section is proposed for a timeshare project of a multisite timeshare program located in this State, the proposed extension is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare declaration also approves the extension.

#### **§ 93A-69.1. Timeshare program terminations.**

- (a) Unless the timeshare declaration provides otherwise, the vote or written consent, or both, of sixty percent (60%) of all voting interests in a timeshare program may terminate the term of the timeshare program at any time. If a timeshare program is terminated pursuant to this section, the termination has immediate effect pursuant to applicable law and the timeshare dec-

laration as if the effective date of the termination were the original date of termination.

- (b) If the timeshare property is managed by a timeshare owners' association that is separate from any underlying owners' association, the termination of a timeshare program does not change the corporate status of the timeshare owners' association. The timeshare owners' association continues to exist only for the purposes of concluding its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, collecting and dividing its assets, and otherwise complying with this subsection.
- (c) After termination of a timeshare program, the managing entity or the board, if there is a timeshare owners' association, shall serve as the termination trustee, and in a fiduciary capacity may bring an action in partition on behalf of the tenants in common in each former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all tenants in common. The termination trustee shall have all other powers reasonably necessary to effect the partition or sale of the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.
- (d) All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this section, including reasonable attorneys' fees and other professionals, must be paid by the tenants in common of the former timeshare property subject to partition or sale proportionate to their respective ownership interests.
- (e) The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former timeshare property and comply with the requirements of this section.
- (f) If a timeshare program is terminated in an underlying property regime and the underlying property regime is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of tenants in common conducted by the termination trustee, or conducted by the board of the owners' association of the underlying property regime, if the owners' association managed the former timeshare property, shall designate a voting representative for the timeshare unit and file a voting certificate with the owners' association for the underlying regime. The voting representative may vote on all matters at meetings of the owners' association for the underlying regime, including termination of the underlying regime.
- (g) Unless the timeshare declaration provides otherwise, this section applies only to a timeshare program that has been in existence for at least 25 years as of the ef-

fective date of the termination vote or consent.

- (h) If a termination vote or consent is proposed for a timeshare project of a multisite timeshare program located in this State, the proposed termination is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the termination."

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**"PURSUANT TO S.L. 2021-192, THIS TIME-SHARE ACT DOES NOT APPLY TO TIMESHARE TRANSFER SERVICES OR TO TRANSFER SERVICE PROVIDERS PRIOR TO JULY 1, 2022."**

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**Article 5.  
Real Estate Appraisers.  
[Repealed]**

**Article 6.  
Broker Price Opinions and  
Comparative Market Analyses**

**§ 93A-82. Definitions.**

As used in this Article, the terms "broker price opinion" and "comparative market analysis" mean an estimate prepared by a licensed real estate broker that details the probable selling price or leasing price of a particular parcel of or interest in property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable properties, but does not include an automated valuation model. (2012-163, s. 2.)

**§ 93A-83. Broker price opinions and comparative market analyses for a fee.**

- (a) Authorized. – A person licensed under this Chapter, other than a provisional broker, may prepare a broker price opinion or comparative market analysis and charge and collect a fee for the opinion if:
  - (1) The license of that licensee is active and in good standing; and
  - (2) The broker price opinion or comparative market analysis meets the requirements of subsection (c) of this section.
  - (3) The requirements of this Article shall not apply to any broker price opinion or comparative market analysis performed by a licensee for no fee or consideration.
- (b) For Whom Opinion May Be Prepared. – Notwithstanding any provision to the contrary, a person licensed under this Chapter may prepare a broker price opinion or comparative market analysis for any of the following:
  - (1) An existing or potential seller of a parcel of real property.
  - (2) An existing or potential buyer of a parcel of real property.
  - (3) An existing or potential lessor of a parcel of or in-

terest in real property.

- (4) An existing or potential lessee of a parcel of or interest in real property.
  - (5) A third party making decisions or performing due diligence related to the potential listing, offering, sale, option, lease, or acquisition price of a parcel of or interest in real property.
  - (6) An existing or potential lienholder or other third party for any purpose other than as the basis to determine the value of a parcel of or interest in property, for a mortgage loan origination, including first and second mortgages, refinances, or equity lines of credit.
  - (7) The provisions of this subsection do not preclude the preparation of a broker price opinion or comparative market analysis to be used in conjunction with or in addition to an appraisal.
- (c) Required Contents of a Broker Price Opinion or Comparative Market Analysis. – A broker price opinion or comparative market analysis shall be in writing and conform to the standards provided in this Article that shall include, but are not limited to, the following:
- (1) A statement of the intended purpose of the broker price opinion or comparative market analysis.
  - (2) A brief description of the subject property and property interest to be priced.
  - (3) The basis of reasoning used to reach the conclusion of the price, including the applicable market data or capitalization computation.
  - (4) Any assumptions or limiting conditions.
  - (5) A disclosure of any existing or contemplated interest of the broker issuing the broker price opinion, including the possibility of representing the landlord/tenant or seller/buyer.
  - (6) The effective date of the broker price opinion.
  - (7) The name and signature of the broker issuing the broker price opinion and broker license number.
  - (8) The name of the real estate brokerage firm for which the broker is acting.
  - (9) The signature date.
  - (10) A disclaimer stating that “This opinion is not an appraisal of the market value of the property, and may not be used in lieu of an appraisal. If an appraisal is desired, the services of a licensed or certified appraiser shall be obtained. This opinion may not be used by any party as the primary basis to determine the value of a parcel of or interest in real property for a mortgage loan origination, including first and second mortgages, refinances, or equity lines of credit.”
  - (11) A copy of the assignment request for the broker price opinion or comparative market analysis.
- (d) Rules. – The North Carolina Real Estate Commission shall have the power to adopt rules that are not inconsistent with the provisions in this Article.
- (e) Additional Requirements for Electronic or Form Sub-

mission. – In addition to the requirement of subsection (c) of this section, if a broker price opinion is submitted electronically or on a form supplied by the requesting party, the following provisions apply:

- (1) A signature required by subdivision (7) of subsection (c) of this section may be an electronic signature, as defined in G.S. 47-16.2.
  - (2) A signature required by subdivision (7) of subsection (c) of this section and the disclaimer required by subdivision (10) of subsection (c) of this section may be transmitted in a separate attachment if the electronic format or form supplied by the requesting party does not allow additional comments to be written by the licensee. The electronic format or form supplied by the requesting party shall do the following:
    - a. Reference the existence of a separate attachment.
    - b. Include a statement that the broker price opinion or comparative market analysis is not complete without the attachment.
- (f) Restrictions. – Notwithstanding any provisions to the contrary, a person licensed pursuant to this Chapter may not knowingly prepare a broker price opinion or comparative market analysis for any purpose in lieu of an appraisal when an appraisal is required by federal or State law. A broker price opinion or comparative market analysis that estimates the value of or worth a parcel of or interest in real estate rather than sales or leasing price shall be deemed to be an appraisal and may not be prepared by a licensed broker under the authority of this Article, but may only be prepared by a duly licensed or certified appraiser, and shall meet the regulations adopted by the North Carolina Appraisal Board. A broker price opinion or comparative market analysis shall not under any circumstances be referred to as a valuation or appraisal.
- (g) No Report of Predetermined Result. – A broker price opinion or comparative market analysis shall not include the reporting of a predetermined result. (2012-163, s. 2; 2012-194, s. 61.)

# NORTH CAROLINA REAL ESTATE COMMISSION RULES

## CHAPTER 93A

**Statutory Authority: Sections 93A-3(c), 93A-4(d), 93A-33, and 93A-51 of the North Carolina Real Estate License Law; and the North Carolina Administrative Procedures Act.**

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# CHAPTER 58

## REAL ESTATE COMMISSION

### Subchapter 58A

### Real Estate Brokers

#### SECTION .0100

#### GENERAL BROKERAGE

##### A .0101 Proof of Licensure

(a) The pocket card issued by the Commission annually to each broker shall be retained by the broker as evidence of licensure. Each broker shall produce a legible form of the card as proof of licensure whenever requested while engaging in real estate brokerage.

(b) Every licensed real estate business entity or firm shall prominently display its license certificate or a copy of its license certificate in each office maintained by the entity or firm. A broker-in-charge shall also display his or her license certificate in the office where he or she is broker-in-charge.

(c) A replacement real estate license or pocket card may be obtained by:

- (1) submitting a written request to the Commission that includes the broker or firm's:
  - (A) legal name;
  - (B) license number;
  - (C) physical and mailing address;
  - (D) phone number;
  - (E) email address;
  - (F) proof of legal name change pursuant to Rule .0103 of this Section, if applicable; and
  - (G) signature; and
- (2) paying a five dollar (\$5.00) duplicate license fee.

##### A .0103 Broker Name and Address

(a) Upon initial licensure, every broker shall notify the Commission of the broker's current personal name, firm name, trade name, residence address, firm address, telephone number, and email address. All addresses provided to the Commission shall be sufficiently descriptive to enable the Commission to correspond with and locate the broker.

(b) Every broker shall notify the Commission in writing of each change of personal name, firm name, trade name, residence address, firm address, telephone number, and email address within 10 days of said change. A broker notifying the Commission of a change of legal name or firm name shall also provide evidence of a legal name change for either the individual or firm, such as a court order or name change amendment from the Secretary of State's Office.

(c) In the event that any broker shall advertise or operate in any manner using a name different from the name under which the broker is licensed, the broker shall first file an assumed name certificate in compliance with G.S. 66-71.4 and shall notify the Commission in writing of the use

of such a firm name or assumed name. An individual broker shall not advertise or operate in any manner that would mislead a consumer as to the broker's actual identity or as to the identity of the firm with which he or she is affiliated.

(d) A broker shall not include the name of a provisional broker or an unlicensed person in the legal or assumed name of a sole proprietorship, partnership, or business entity other than a corporation or limited liability company. No broker shall use a business name that includes the name of any current or former broker without the permission of that broker or that broker's authorized representative.

##### A .0104 Agency Agreements and Disclosure

(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant that seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing and signed by the parties thereto from its formation. A broker shall not continue to represent a buyer or tenant without a written, signed agreement when such agreement is required by this Rule. Every written agreement for brokerage services of any kind in a real estate transaction shall be for a definite period of time, shall include the broker's license number, and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. Every written agreement for brokerage services that includes a penalty for early termination shall set forth such a provision in a clear and conspicuous manner that shall distinguish it from other provisions of the agreement. For the purposes of this Rule, an agreement between brokers to co-operate or share compensation shall not be considered an agreement for brokerage services and, except as required by

Rule .1807 of this Subchapter, need not be memorialized in writing.

(b) Every listing agreement, written buyer agency agreement, or other written agreement for brokerage services in a real estate transaction shall contain the following provision: "The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap, or familial status of any party or prospective party." The provision shall be set forth in a clear and conspicuous manner that shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, "familial status" shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker shall, at first substantial contact with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," set forth the broker's name and license number thereon, review the publication with the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter. For the purposes of this Rule, "first substantial contact" shall include contacts between a broker and a consumer where the consumer or broker begins to act as though an agency relationship exists and the consumer begins to disclose to the broker personal or confidential information. The "Working with Real Estate Agents" publication may be obtained on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission.

(d) A real estate broker representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. The written authority shall be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency shall be reduced to writing not later than the time that one of the parties represented by the broker makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker represents the interests of the seller. The written disclosure shall include the broker's license number. If the

first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker shall immediately disclose by similar means whom he or she represents and shall immediately mail or otherwise transmit a copy of the written disclosure to the buyer. In no event shall the broker mail or transmit a copy of the written disclosure to the buyer later than three days from the date of first substantial contact with the buyer.

(f) In every real estate sales transaction, a broker representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he or she represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase and shall include the broker's license number.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule do not apply to real estate brokers representing sellers in auction sales transactions.

(h) A broker representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he or she represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm that represents more than one party in the same real estate transaction is a dual agent and, through the brokers associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual brokers associated with the firm to represent only the interests of the seller and one or more other individual brokers associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency shall be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker shall not be so designated and shall not undertake to represent only the interests of one party if the broker has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated broker for a party in a real estate sales transaction when a provisional broker under his or her supervision will act as a designated broker for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker to represent the seller, the broker so design-

nated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller that the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker to represent the buyer, the broker so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker designated to represent the seller:

- (1) that the buyer may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the buyer that the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms, or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party that the party has identified as confidential, unless disclosure is otherwise required by statute or rule.

(o) A broker who is selling property in which the broker has an ownership interest shall not undertake to represent a buyer of that property except that a broker who is selling commercial real estate as defined in Rule .1802 of this Subchapter in which the broker has less than 25% ownership interest may represent a buyer of that property if the buyer consents to the representation after full written disclosure of the broker's ownership interest. A firm listing a property owned by a broker affiliated with the firm may represent a

buyer of that property so long as any individual broker representing the buyer on behalf of the firm does not have an ownership interest in the property and the buyer consents to the representation after full written disclosure of the broker's ownership interest.

(p) A broker or firm with an existing listing agreement for a property shall not enter into a contract to purchase that property unless, prior to entering into the contract, the listing broker or firm first discloses in writing to their seller-client that the listing broker or firm may have a conflict of interest in the transaction and that the seller-client may want to seek independent counsel of an attorney or another licensed broker. Prior to the listing broker entering into a contract to purchase the listed property, the listing broker and firm shall either terminate the listing agreement or transfer the listing to another broker affiliated with the firm. Prior to the listing firm entering into a contract to purchase the listed property, the listing broker and firm shall disclose to the seller-client in writing that the seller-client has the right to terminate the listing and the listing broker and firm shall terminate the listing upon the request of the seller-client.

#### **A .0105 Advertising**

(a) Authority to Advertise.

(1) A broker shall not advertise any brokerage service or the sale, purchase, exchange, rent, or lease of real estate for another or others without the consent of his or her broker-in-charge and without including in the advertisement the name of the firm or sole proprietorship with which the broker is affiliated.

(2) A broker shall not display a "for sale" or "for rent" sign on any real estate or otherwise advertise any real estate without the written consent of the owner or the owner's authorized agent.

(b) Blind Ads. A broker shall not advertise the sale, purchase, exchange, rent, or lease of real estate for others in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the broker's principal only. Every such advertisement shall indicate that it is the advertisement of a broker or firm and shall not be confined to publication of only contact information, such as a post office box number, telephone number, street address, internet web address, or e-mail address.

(c) A person licensed as a limited nonresident commercial broker shall comply with the provisions of Rule .1809 of this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina broker.

#### **A .0106 Delivery of Instruments**

(a) Except as provided in Paragraph (b) of this Rule, every broker shall deliver a copy of any written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to their customer or client

within three days of the broker's receipt of the executed document.

(b) A broker may be relieved of the duty to deliver copies of leases or rental agreements to a property owner pursuant to Paragraph (a) of this Rule if the broker:

- (1) obtains the prior written authority of the property owner to enter into and retain copies of leases or rental agreements on behalf of the property owner;
- (2) executes the lease or rental agreement on a pre-printed form, the material terms of which may not be changed by the broker without prior approval by the property owner, except as may be required by law; and
- (3) delivers to the property owner an accounting within 45 days following the date of execution of the lease or rental agreement that identifies:
  - (A) the leased property;
  - (B) the name, phone number, and home address of each tenant; and
  - (C) the rental rates and rents collected.

(c) Paragraph (b) of this Rule notwithstanding, upon the request of a property owner, a broker shall deliver a copy of any lease or rental agreement within five days.

#### **A .0108 Retention of Records**

(a) Brokers shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed, or terminated. The broker shall retain records for three years after all funds held by the broker in connection with the transaction have been disbursed to the proper party or parties or the conclusion of the transaction, whichever occurs later. If the broker's agency agreement is terminated prior to the conclusion of the transaction, the broker shall retain such records for three years after the termination of the agency agreement or the disbursement of all funds held by or paid to the broker in connection with the transaction, whichever occurs later.

(b) Records shall include copies of the following:

- (1) contracts of sale;
- (2) written leases;
- (3) agency contracts;
- (4) options;
- (5) offers to purchase;
- (6) trust or escrow records;
- (7) earnest money receipts;
- (8) disclosure documents;
- (9) closing statements;
- (10) brokerage cooperation agreements;
- (11) declarations of affiliation;
- (12) broker price opinions and comparative market analyses prepared pursuant to G.S. 93A, Article 6, including any notes and supporting documentation;
- (13) sketches, calculations, photos, and other documentation used or relied upon to determine square footage;

- (14) advertising used to market a property; and
- (15) any other records pertaining to real estate transactions.

(c) All records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

(d) Brokers shall provide a copy of the written agency disclosure and acknowledgement thereof when applicable, written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to the firm or sole proprietorship with which they are affiliated within three days of receipt.

#### **A .0109 Brokerage Fees and Compensation**

(a) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value from a vendor or a supplier of goods and services for an expenditure made on behalf of the licensee's principal in a real estate transaction without the written consent of the licensee's principal.

(b) A licensee shall not receive, either directly or indirectly, any commission, rebate, or other valuable consideration of more than nominal value for services which the licensee recommends, procures, or arranges relating to a real estate transaction for a party, without full and timely disclosure to such party.

(c) In a real estate sales transaction, a broker shall not receive any compensation, incentive, bonus, rebate, or other consideration of more than nominal value:

- (1) from his principal unless the compensation, incentive, bonus, rebate, or other consideration is provided for in a written agency contract prepared in conformity with the requirements of 21 NCAC 58A .0104.
- (2) from any other party or person unless the broker provides full and timely disclosure of the incentive, bonus, rebate, or other consideration, or the promise or expectation thereof to the broker's principal. The disclosure may be made orally, but must be confirmed in writing before the principal makes or accepts an offer to buy or sell.

(d) Full disclosure shall include a description of the compensation, incentive, bonus, rebate, or other consideration including its value and the identity of the person or party by whom it will or may be paid. A disclosure is timely when it is made in sufficient time to aid a reasonable person's decision-making.

(e) Nothing in this rule shall be construed to require a broker to disclose to a person not his principal the compensation the broker expects to receive from his principal or to disclose to his principal the compensation the broker expects to receive from the broker's employing broker. For the purpose of this Rule, nominal value means of insignificant, token, or merely symbolic worth.

(f) The Commission shall not act as a board of arbitra-

tion and shall not compel parties to settle disputes concerning such matters as the rate of commissions, the division of commissions, pay of brokers, and similar matters.

(g) Except as provided in (h) of this rule, a licensee shall not undertake in any manner, any arrangement, contract, plan or other course of conduct, to compensate or share compensation with unlicensed persons or entities for any acts performed in North Carolina for which licensure by the Commission is required.

(h) A broker may pay or promise to pay consideration to a travel agent in return for procuring a tenant for a vacation rental as defined by the Vacation Rental Act if:

- (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in any activity which would require a real estate license;
- (2) the introduction by the travel agent is made in the regular course of the travel agent's business; and
- (3) the travel agent has not solicited, handled or received any monies in connection with the vacation rental.

For the purpose of this Rule, a travel agent is any person or entity who is primarily engaged in the business of acting as an intermediary between persons who purchase air, land, and ocean travel services and the providers of such services. A travel agent is also any other person or entity who is permitted to handle and sell tickets for air travel by the Airlines Reporting Corporation (ARC). Payments authorized hereunder shall be made only after the conclusion of the vacation rental tenancy. Prior to the creation of a binding vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement advising him or her to rely only upon the agreement and the broker's representations about the transaction. The broker shall keep for a period of three years records of a payment made to a travel agent including records identifying the tenant, the travel agent and their addresses, the property and dates of the tenancy, and the amount paid.

(i) Nothing in this Rule shall be construed to permit a licensee to accept any fee, kickback or other valuable consideration that is prohibited by the Real Estate Settlement Procedures Act (12 USC 2601 et. seq.) or any rules and regulations promulgated by the United States Department of Housing and Urban Development pursuant to said Act or to fail to make any disclosure required by said Act or rules.

#### **A .0110 Broker-in-Charge**

(a) Every real estate firm shall designate one BIC for its principal office and one BIC for each of its branch offices. No office of a firm shall have more than one designated BIC. A BIC shall not serve as BIC for more than one office unless each of those offices share the same physical office space and delivery address.

(b) Every sole proprietorship shall designate a BIC if the sole proprietorship:

- (1) engages in any transaction where a broker is re-

quired to deposit and maintain monies belonging to others in a trust account;

(2) engages in advertising or promoting services as a broker in any manner; or

(3) has one or more other brokers affiliated with the sole proprietorship in the real estate business.

(c) A licensed real estate firm shall not be required to have a BIC if it:

(1) is organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;

(2) is treated for tax purposes as a pass-through business by the United States Internal Revenue Service;

(3) has no principal or branch office; and

(4) has no licensed person associated with it other than its qualifying broker.

(d) A broker who maintains a trust or escrow account for the sole purpose of holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not be required to be a BIC.

(e) In order for a broker to designate as a BIC for a sole proprietor, real estate firm, or branch office, a broker shall apply for BIC Eligible status by submitting an application on a form available on the Commission's website. The BIC Eligible status form shall include the broker's:

(1) name;

(2) license number;

(3) telephone number;

(4) email address;

(5) criminal history and history of occupational license disciplinary actions;

(6) certification of compliance with G.S. 93A-4.2, including that:

(A) his or her broker license is on active status;

(B) the broker has obtained at least two years of real estate brokerage experience equivalent to 40 hours per week within the previous five years or shall be a North Carolina licensed attorney with a practice that consisted primarily of handling real estate closings and related matters in North Carolina for three years immediately preceding application; and

(C) the broker completed the 12-hour Broker-in-Charge Course no earlier than one year prior to application and no later than 120 days after application; and

(7) signature.

(f) A broker who holds BIC Eligible status shall submit a form to become the designated BIC for a sole proprietor, real estate firm, or branch office. The BIC designation form shall include:

(1) the broker's:

(A) name;

(B) license number;

- (C) telephone number;
- (D) email address; and
- (E) criminal history and history of occupational license disciplinary actions; and
- (2) the firm's:
  - (A) name; and
  - (B) license number, if applicable;

(g) A designated BIC shall:

- (1) assure that each broker affiliated at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;
- (3) be responsible for the conduct of advertising by or in the name of the firm at such office;
- (4) maintain the trust or escrow account of the firm and the records pertaining thereto;
- (5) retain and maintain records relating to transactions conducted by or on behalf of the firm, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) supervise all brokers affiliated at the office with respect to adherence to agency agreement and disclosure requirements;
- (8) notify the Commission in writing that he or she is no longer serving as BIC of a particular office within 10 days following any such change;
- (9) complete the Commission's Basic Trust Account Procedures Course within 120 days of assuming responsibility for a trust account in accordance with G.S. 93A-6(g), however the BIC shall not be required to complete the course more than once in three years; and
- (10) supervise all unlicensed individuals employed at the office and ensure that unlicensed individuals comply with G.S. 93A-2(c)(6).

(h) A broker holding BIC Eligible status shall take the Broker-in-Charge Update Course during the license year of designation, unless the broker has satisfied the requirements of Rule .1702 of this Subchapter prior to designation.

(i) A broker's BIC Eligible status shall terminate if the broker:

- (1) made any false statements or presented any false, incomplete, or incorrect information in connection with an application;
- (2) fails to complete the 12-hour Broker-in-Charge Course pursuant to Paragraph (e) of this Rule;
- (3) fails to renew his or her broker license pursuant to Rule .0503 of this Subchapter, or the broker's li-

cense has been suspended, revoked, or surrendered; or

(4) fails to complete the Broker-in-Charge Update Course and a four credit hour elective course pursuant to Rules .1702 and .1711 of this Subchapter, if applicable.

(j) In order to regain BIC Eligible status after a broker's BIC Eligible status terminates, the broker shall complete the 12-hour Broker-in-Charge Course prior to application and then submit a BIC Eligible status form pursuant to Paragraph (e) of this Rule.

(k) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

(l) A broker shall not be granted BIC Eligible status or designated as BIC of a firm if there is a pending Commission investigation against the broker.

### **A .0111 Drafting Legal Instruments**

(a) A broker acting as an agent in a real estate transaction shall not draft offers, sales contracts, options, leases, promissory notes, deeds, deeds of trust or other legal instruments by which the rights of others are secured; however, a broker may complete preprinted offer, option contract, sales contract and lease form in a real estate transaction when authorized or directed to do so by the parties.

(b) A broker may use electronic, computer, or word processing equipment to store preprinted offer and sales contract forms which comply with Rule .0112, as well as preprinted option and lease forms, and may use such equipment to complete and print offer, contract and lease documents. Provided, however, a broker may not alter the form before it is presented to the parties. If the parties propose to delete or change any word or provision in the form, the form must be marked to indicate the change or deletion made. The language of the form shall not be modified, rewritten, or changed by the broker or their clerical employees unless directed to do so by the parties.

(c) Nothing contained in this rule shall be construed to prohibit a broker from making written notes, memoranda or correspondence recording the negotiations of the parties to a real estate transaction when such notes, memoranda or correspondence do not themselves constitute binding agreements or other legal instruments.

### **A .0112 Offers and Sales Contracts**

(a) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form unless the form describes or specifically requires the entry of the following information:

- (1) the names of the buyer and seller;
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;
- (3) an itemization of any personal property to be included in the transaction;

- (4) the purchase price and manner of payment;
- (5) any portion of the purchase price that will be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and any other terms contained in the promissory note deemed material by the parties;
- (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;
- (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0116 of this Subchapter;
- (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, and who shall pay loan closing costs, and a condition that the buyer shall make every reasonable effort to obtain the loan;
- (9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
- (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
- (11) the date for closing and transfer of possession;
- (12) the signatures of the buyer and seller;
- (13) the date of offer and acceptance;
- (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer or a provision otherwise describing the estate to be conveyed with encumbrances, and the form of conveyance;
- (15) the items to be prorated or adjusted at closing;
- (16) who shall pay closing expenses;
- (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;
- (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing;

- ing;
- (19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents; and
- (20) any other provisions or disclosures required by statute or rule.

(b) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing:

- (1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker or firm; or
- (2) any provision that attempts to disclaim the liability of a broker for his or her representations in connection with the transaction.

A broker or anyone acting for or at the direction of the broker shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys.

(c) The provisions of this Rule shall apply only to preprinted offer and sales contract forms which a broker acting as an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.

#### **A .0113 Reporting Criminal Convictions and Disciplinary Actions**

Any broker who is convicted of any felony or misdemeanor, or who is disciplined by or enters into a conciliation agreement or consent order with any governmental agency in connection with any occupational license, or whose notarial commission is restricted, suspended, or revoked, shall file with the Commission a Criminal Conviction Disciplinary Action Reporting Form of such conviction or action within 60 days of the final judgment, order, or disposition in the case. The Criminal Conviction Disciplinary Action Reporting Form is available on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission. In the Form, the broker shall set forth the broker's:

- (1) full legal name;
- (2) physical and mailing address;
- (3) real estate license number;
- (4) telephone number;
- (5) email address;
- (6) social security number;
- (7) date of birth; and
- (8) description of the criminal conviction and disciplinary action, including the jurisdiction and file number.



STATE OF NORTH CAROLINA  
RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

Instructions to Property Owners

1. The Residential Property Disclosure Act (G.S. 47E) ("Disclosure Act") requires owners of residential real estate (single-family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish buyers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option, and sale under a lease with option to purchase where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check (✓) in the appropriate box. In responding to the questions, you are only obligated to disclose information about which you have actual knowledge.
  - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
  - b. If you check "No," you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
  - c. If you check "No Representation," you are choosing not to disclose the conditions or characteristics of the property, even if you have actual knowledge of them or should have known of them.
  - d. If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the buyer a corrected Disclosure Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Disclosure Statement to the buyers; and the broker must disclose any material facts about your property which he or she knows or reasonably should know, regardless of your responses on the Disclosure Statement.
4. You must give the completed Disclosure Statement to the buyer no later than the time the buyer makes an offer to purchase your property. If you do not, the buyer can, under certain conditions, cancel any resulting contract (See "**Note to Buyers**" below). You should give the buyer a copy of the Disclosure Statement containing your signature and keep a copy signed by the buyer for your records.

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Note to Buyer: If the owner does not give you a Residential Property and Owners' Association Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract without penalty to you as the buyer. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

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5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: \_\_\_\_\_

Owner's Name(s): \_\_\_\_\_

*Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.*

Owner Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_

Owner Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_

*Buyers acknowledge receipt of a copy of this Disclosure Statement; that they have examined it before signing; that they understand that this is not a warranty by owners or owners' agents; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owners and not the owners' agents or subagents. Buyers are strongly encouraged to obtain their own inspections from a licensed home inspector or other professional. As used herein, words in the plural include the singular, as appropriate.*

Buyer Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_

Buyer Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_

Property Address/Description: \_\_\_\_\_

**The following questions address the characteristics and condition of the property identified above about which the owner has actual knowledge. Where the question refers to “dwelling,” it is intended to refer to the dwelling unit, or units if more than one, to be conveyed with the property. The term “dwelling unit” refers to any structure intended for human habitation.**

	Yes	No	No Representation
1. In what year was the dwelling constructed? _____ Explain if necessary: _____			<input type="checkbox"/>
2. Is there any problem, malfunction or defect with the dwelling's foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications to them?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. The dwelling's exterior walls are made of what type of material? <input type="checkbox"/> Brick Veneer <input type="checkbox"/> Wood <input type="checkbox"/> Stone <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Concrete <input type="checkbox"/> Fiber Cement <input type="checkbox"/> Aluminum <input type="checkbox"/> Asbestos <input type="checkbox"/> Other _____ (Check all that apply)			<input type="checkbox"/>
4. In what year was the dwelling's roof covering installed? _____ (Approximate if no records are available) Explain if necessary: _____			<input type="checkbox"/>
5. Is there any leakage or other problem with the dwelling's roof?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. What is the dwelling's heat source? <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other _____ (Check all that apply) Age of system: _____			<input type="checkbox"/>
11. What is the dwelling's cooling source? <input type="checkbox"/> Central Forced Air <input type="checkbox"/> Wall/Window Unit(s) <input type="checkbox"/> Other _____ (Check all that apply) Age of system: _____			<input type="checkbox"/>
12. What are the dwelling's fuel sources? <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other _____ (Check all that apply) If the fuel source is stored in a tank, identify whether the tank is <input type="checkbox"/> above ground or <input type="checkbox"/> below ground, and whether the tank is <input type="checkbox"/> leased by seller or <input type="checkbox"/> owned by seller. (Check all that apply)			<input type="checkbox"/>
13. What is the dwelling's water supply source? <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well <input type="checkbox"/> Shared Well <input type="checkbox"/> Other _____ (Check all that apply).....			<input type="checkbox"/>
14. The dwelling's water pipes are made of what type of material? <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> Plastic <input type="checkbox"/> Polybutylene <input type="checkbox"/> Other _____ (Check all that apply).....			<input type="checkbox"/>
15. Is there any problem, malfunction or defect with the dwelling's water supply (including water quality, quantity, or water pressure)?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. What is the dwelling's sewage disposal system? <input type="checkbox"/> Septic Tank <input type="checkbox"/> Septic Tank with Pump <input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System <input type="checkbox"/> City/County System available <input type="checkbox"/> Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) <input type="checkbox"/> Other _____ (Check all that apply).....			<input type="checkbox"/>
17. If the dwelling is serviced by a septic system, do you know how many bedrooms are allowed by the septic system permit? If your answer is “yes,” how many bedrooms are allowed? _____ <input type="checkbox"/> No records available	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. Is there any problem, malfunction or defect with the dwelling's sewer and/or septic system?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. Is there any problem, malfunction or defect with the dwelling's central vacuum, pool, hot tub, spa, attic fan, exhaust fan, ceiling fans, sump pump, irrigation system, TV cable wiring or satellite dish, garage door openers, gas logs, or other systems?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. Is there any problem, malfunction or defect with any appliances that may be included in the conveyance (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

	Yes	No	No Representation
21. Is there any problem with present infestation of the dwelling, or damage from past infestation of wood destroying insects or organisms which has not been repaired?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22. Is there any problem, malfunction or defect with the drainage, grading or soil stability of the property?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23. Are there any structural additions or other structural or mechanical changes to the dwelling(s) to be conveyed with the property?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24. Is the property to be conveyed in violation of any local zoning ordinances, restrictive covenants, or other land-use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25. Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) located on or which otherwise affect the property?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26. Is there any noise, odor, smoke, etc. from commercial, industrial, or military sources which affects the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27. Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
28. Is the property the subject of any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmens' liens, or notices from any governmental agency that could affect title to the property?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
29. Is the property subject to a flood hazard or is the property located in a federally-designated flood hazard area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30. Does the property abut or adjoin any private road(s) or street(s)?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
31. If there is a private road or street adjoining the property, is there in existence any owners' association or maintenance agreements dealing with the maintenance of the road or street?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**If you answered "yes" to any of the questions listed above (1-31) please explain (attach additional sheets if necessary):**

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector, or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

**The following questions pertain to the property identified above, including the lot to be conveyed and any dwelling unit(s), sheds, detached garages, or other buildings located thereon.**

	Yes	No	No Representation
32. Is the property subject to governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot or unit?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**If you answered "yes" to the question above, please explain (attach additional sheets if necessary):**

33. Is the property subject to regulation by one or more owners' association(s) including, but not limited to, obligations to pay regular assessments or dues and special assessments? If you answer is "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------	--------------------------

• (specify name) \_\_\_\_\_ whose regular assessments ("dues") are \$ \_\_\_\_\_ per \_\_\_\_\_. The name, address and telephone number of the president of the owners' association or the association manager are \_\_\_\_\_

• (specify name) \_\_\_\_\_ whose regular assessments ("dues") are \$ \_\_\_\_\_ per \_\_\_\_\_. The name, address and telephone number of the president of the owners' association or the association manager are \_\_\_\_\_

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

**\*If you answered "Yes" to question 33 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to question 33 above, you do not need to answer the remaining questions on this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.**

	<u>Yes</u>	<u>No</u>	<u>No Representation</u>
34. Are any fees charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If your answer is "yes," please state the amount of the fees: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
35. As of the date this Disclosure Statement is signed, are there any dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, and that are payable to an association to which the lot is subject? If your answer is "yes," please state the nature and amount of the dues, fees, or special assessments to which the property is subject: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
36. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against, or pending lawsuits <i>involving the property or lot to be conveyed</i> ? If your answer is "yes," please state the nature of each pending lawsuit, and the amount of each unsatisfied judgment: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
37. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against, or pending lawsuits <i>involving the planned community or the association to which the property and lot are subject</i> , with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit, and the amount of each unsatisfied judgment: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
38. Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply).	<u>Yes</u>	<u>No</u>	<u>No Representation</u>
Management Fees.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Building Maintenance of Property to be Conveyed.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Master Insurance.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Yard/Landscaping Maintenance of Lot to be Conveyed.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Areas Maintenance.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash Removal.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Amenity Maintenance (specify amenities covered) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pest Treatment/Extermination.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Storm water Management/Drainage/Ponds.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet Service.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cable.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private Road Maintenance.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gate and/or Security.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: (specify) _____			

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_

#### **A.0114 Residential Property and Owners' Association Disclosure Statement**

(a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete the following Residential Property and Owners' Association Disclosure Statement and furnish a copy of the complete statement to a buyer in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the text of the form shall not be altered or amended in any way.

(c) The form described in Paragraph (a) of this Rule as amended effective July 1, 2021, applies to all properties placed on the market on or after July 1, 2021. The form described in Paragraph (a) of this Rule as amended effective July 1, 2018, applies to all properties placed on the market prior to July 1, 2021. If a corrected disclosure statement required by G.S. 47E-7 is prepared on or after July 1, 2021, for a property placed on the market prior to July 1, 2021, the form described in Paragraph (a) of this Rule as amended effective July 1, 2021, shall be used.

#### **A.0115 Disclosure of Offers Prohibited**

A broker shall not disclose the price or other material terms contained in a party's offer to purchase, sell, lease, rent, or to option real property to a competing party without the express authority of the offering party.

#### **A.0116 Handling of Trust Money**

(a) Except as provided in Paragraph (b) of this Rule, all monies received by a broker acting in his or her fiduciary capacity (hereinafter "trust money") shall be deposited in a trust or escrow account as defined in Rule .0117(b) of this Section no later than three banking days following the broker's receipt of such monies.

(b) Exceptions to the requirements of Paragraph (a):

(1) All monies received by a provisional broker shall be delivered upon receipt to the broker with whom he or she is affiliated.

(2) All monies received by a non-resident commercial broker shall be delivered as required by Rule .1808 of this Subchapter.

(3) Earnest money or tenant security deposits paid by means other than currency and received by a broker in connection with a pending offer to purchase or lease shall be deposited in a trust or escrow account no later than three days following acceptance of the offer to purchase or lease; the date of acceptance of the offer or lease shall be set forth in the purchase or lease agreement.

(4) A broker may accept custody of a check or other negotiable instrument made payable to the seller of real property as payment for an option or due

diligence fee, or to the designated escrow agent in a sales transaction, but only for the purpose of delivering the instrument to the seller or designated escrow agent. While the instrument is in the custody of the broker, the broker shall, according to the instructions of the buyer, either deliver it to the named payee or return it to the buyer. The broker shall safeguard the instrument and be responsible to the parties on the instrument for its safe delivery as required by this Rule. A broker shall not retain an instrument for more than three business days after the acceptance of the option or other sales contract.

(c) Prior to depositing trust money into a trust or escrow account that bears interest, the broker having custody over the money shall first secure written authorization from all parties having an interest in the money. Such authorization shall specify and set forth in a conspicuous manner how and to whom the interest shall be disbursed.

(d) In the event of a dispute between buyer and seller or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by the broker, the broker shall retain the deposit in a trust or escrow account until the broker has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the broker may deposit the disputed monies with the appropriate Clerk of Superior Court in accordance with the provisions of G.S. 93A-12. If it appears that one of the parties has abandoned his or her claim to the funds, the broker may disburse the money to the other claimant according to the written agreement. Before doing so, however, the broker must first make a reasonable effort to notify the absent party and provide that party with an opportunity to renew his or her claim to the funds. Tenant security deposits shall be disposed of in accordance with G.S. 42-50 through 56 and G.S. 42A-18.

(e) A broker may transfer an earnest money deposit from his or her trust or escrow account to the closing attorney or other settlement agent no more than 10 days prior to the anticipated settlement date. A broker shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(f) A broker shall not disburse trust money to or on behalf of a client in an amount exceeding the balance of trust money belonging to the client and held in the trust account.

(g) Every broker shall safeguard any money or property of others that comes into the broker's possession in a manner consistent with the Real Estate License Law and Commission rules. A broker shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that it was intended for, or permit or assist any other person in the conversion or misapplication of such money or property.

### **A.0117 Accounting for Trust Money**

(a) A broker shall create, maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit and disbursement of such funds into and from a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account.

(b) A trust or escrow account shall satisfy the requirements of G.S. 93A-6(g) and shall be designated as a "Trust Account" or "Escrow Account." All bank statements, deposit tickets and checks drawn on said account shall bear the words "Trust Account" or "Escrow Account." A trust account shall provide for the full withdrawal of funds on demand without prior notice and without penalty or deduction to the funds.

(c) A broker shall create, maintain or retain, as required by Rule .0108 of this Section, the following records:

- (1) bank statements;
- (2) canceled checks and other evidence or memoranda of payments from the trust or escrow account, whether by transfer between accounts, wire payments, or payments by electronic means, that shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledgers or for rental transactions, the corresponding property or owner ledgers. Checks and other evidence or memoranda of payments from the account shall identify the payee by name and shall bear a notation identifying the purpose of the disbursement. When a payment is used to disburse funds for more than one sales transaction, owner, or property, the check or other evidence or memoranda of payment shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet that shall be cross-referenced to the corresponding check or payment. In lieu of retaining canceled checks, a broker may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the broker's bank retains for a period of at least five years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F.R. 229.51 and makes the original or substitute checks available to the broker and the Commission upon request. The description of "substitute checks" contained in 12 C.F.R. 229.51 is incorporated by referencing, including subsequent amendments and

additions. The regulation may be accessed at [www.gpo.gov](http://www.gpo.gov) at no charge.

(3) deposit tickets or other evidence or memoranda of deposits or payments into the account, whether by transfer between accounts, wire payments, or payments by electronic means:

(A) for a sales transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger;

(B) for a rental transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger;

(C) for deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment;

(D) when a single deposit ticket or payment is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information may either be recorded on the ticket or other evidence or memoranda of deposits or payments into the account for each sales transaction, owner, or property, or it may refer to the same information recorded on a supplemental deposit worksheet that shall be cross-referenced to the corresponding deposit ticket;

(4) a separate ledger for each sales transaction, for each property or owner of property managed by the broker and for company funds held in the trust account:

(A) the ledger for a sales transaction shall identify the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for each deposit and disbursement entry;

(B) the ledger for a rental transaction shall identify the particular property or owner of property, the tenant, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running bal-

ance of funds on deposit for each deposit and disbursement entry. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit, the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property as well as the check number, amount, date, payee, purpose and a running balance for each disbursement. When tenant security deposit monies are accounted for on a separate ledger as provided in this Rule, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries;

(C) a broker may maintain a maximum of one hundred dollars (\$100.00) in company funds in a trust account for the purpose of paying service charges incurred by the account. In the event that the services charges exceed one hundred dollars (\$100.00) monthly, the broker may deposit an amount each month sufficient to cover the service charges. A broker shall maintain a separate ledger for company funds held in the trust account identifying the date, amount and running balance for each deposit and disbursement;

(5) a general journal, check register or check stubs identifying in chronological order each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for each entry into the account;

(6) a payment record for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Rule .0118 of this Section. Payment record(s) shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;

(7) copies of earnest money checks, due diligence fee checks, receipts for cash payments, contracts, and closing statements in sales transactions;

(8) copies of leases, security deposit checks, property management agreements, property management statements, and receipts for cash payments in leasing transactions;

(9) copies of covenants, bylaws, minutes, management agreements and periodic statements relating to

the management of property owner associations;

(10) copies of invoices, bills, and contracts paid from the trust account; and

(11) copies of any documents not otherwise described in this Rule that are necessary to verify and explain record entries.

(d) Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets.

(e) Brokers shall reconcile their trust or escrow accounts monthly. The trust account reconciliation shall be performed in the following manner as of a specific cutoff date selected by the broker:

- (1) a trial balance shall be prepared showing a list of the property or owner ledgers, their balances, and the total of all of the property or owner ledger balances as of the cutoff date;
- (2) a bank statement shall be reconciled by deducting from the statement's ending balance the amount of any outstanding checks and then adding to the balance the amount of any deposits-in-transit as of the cutoff date; and
- (3) the trial balance, reconciled bank statement balance, and the journal balance shall be compared as of the cutoff date. If the amounts on the trial balance, journal balance and reconciled bank balance do not agree, the broker shall investigate the reason for any variation between the balances and make the necessary corrections to bring the balances into agreement.

A broker shall maintain and retain a worksheet for each monthly trust account reconciliation showing the balance of the journal or check stubs, the trial balance and the reconciled bank statement balance to be in agreement as of the cutoff date.

(f) In addition to the records required by Paragraph (c) of this Rule, a broker acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain either a subsidiary ledger sheet for each property or owner of such properties on which all funds collected and disbursed are identified in categories by purpose or an accounts payable ledger for each owner or property and each vendor to whom trust monies are due. If a broker maintains a subsidiary ledger, the broker shall reconcile the subsidiary ledgers to the corresponding property or property owner ledger on a monthly basis. If a broker maintains an accounts payable ledger, the broker shall record on the ledger monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger entry including the amount to be disbursed for each and the purpose of the disbursement. The broker may also maintain an accounts payable ledger in the format described above for vacation rental tenant secu-

rity deposit monies and vacation rental advance payments.

(g) Upon the written request of a client, a broker shall, no later than ten days after receipt of the request, furnish the client with copies of any records retained as required by Rule .0108 of this Section that pertain to the transaction to which the client was a party.

(h) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule .0108 of this Section.

#### **A .0118 Trust Money Belonging To Property Owners' Associations**

(a) The funds of a property owners' association, when collected, maintained, disbursed or otherwise controlled by a broker, are trust money and shall be treated as such in the manner required by Rules .0116 and .0117 of this Section. Such trust money shall be deposited into and maintained in a trust or escrow account dedicated exclusively for trust money belonging to a single property owners' association and shall not be commingled with funds belonging to other property owners' associations or other persons or parties. A broker who undertakes to act as manager of a property owners' association or as the custodian of trust money belonging to a property owners' association shall provide the association with periodic statements that report the balance of association trust money in the broker's possession or control and account for the trust money the broker has received and disbursed on behalf of the association. Such statements must be made in accordance with the broker's agreement with the association, but not less frequently than every 90 days.

(b) A broker who receives trust money belonging to a property owners' association in his or her capacity as an officer of the association in a residential development in which the broker is a property owner and for which the broker receives no compensation is exempt from the requirements of Rules .0116 and .0117 of this Section. However, the broker shall not convert trust money belonging to the association to his or her own use, apply such money or property to a purpose other than that for which it was intended or permit or assist any other person in the conversion or misapplication of such money or property.

#### **A .0119 Mineral and Oil And Gas Rights Mandatory Disclosure Statement**

(a) Every owner of real property subject to a transfer of the type governed by G.S. 47E-1 and 47E-2(b) shall complete a disclosure statement form prescribed by the Commission and designated "Mineral and Oil and Gas Rights Mandatory Disclosure Statement," and shall furnish a copy of the completed form to a purchaser as required by G.S. 47E-4.1. The form shall bear the seal of the North Carolina Real Estate Commission and shall include the following:

- (1) instructions to property owners regarding transactions when the disclosure statement is required;
- (2) the text and format of the disclosure statement

form as required by G.S. 47E-4.1(a);

(3) a note to purchasers regarding their rights under G.S. 47E-5 in the event they are not provided with a disclosure statement as required by G.S. 47E-4.1;

(4) the identification of the subject property and the parties to the transaction;

(5) an acknowledgment by the owner(s) that the disclosure statement is true and correct as of the date signed; and

(6) an acknowledgment by the buyer(s) of the receipt of a copy of the disclosure statement.

(b) The disclosure statement form described in Paragraph (a) of this Rule shall be available on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov) or upon request to the Commission.

(c) The disclosure statement form described in Paragraph (a) of this Rule may be reproduced, but the text of the form shall not be altered or amended in any way.

(d) Every broker representing a party in a real estate transaction governed by G.S. 47E-1 and 47E-2(b) shall inform each client of the client's rights and obligations under G.S. Chapter 47E.

(e) The disclosure statement form described in Paragraph (a) of this Rule applies to all contracts executed on or after January 1, 2015.

#### **A .0120 Prohibited Acts**

(a) A broker shall not require or demand of any escrow agent or attorney that a broker's commission be split with or paid to another person or entity.

(b) An affiliated broker shall not be paid a commission or referral fee directly by anyone other than their current BIC or the person who served as their BIC at the time of the transaction.

(c) A broker shall not coerce, extort, collude, instruct, induce, bribe, or intimidate a service provider in a real estate transaction in order to influence or attempt to influence their findings, report, or decision. Service providers include, but are not limited to, appraisers, attorneys, inspectors, financial lenders, and contractors.

(d) A broker shall not conduct brokerage activities or otherwise promote their status as a real estate broker in any manner that discriminates on the basis of race, color, religion, national origin, sex, familial status, or disability.

### **SECTION .0300 APPLICATION FOR LICENSE**

#### **A .0301 Form**

An individual or business entity who wishes to file an application for a broker license shall make application on a form prescribed by the Commission and can obtain the required form upon request to the Commission. In general, the application form for an individual calls for information such as the applicant's name and address, the applicant's social security number,

satisfactory proof of the applicant's identity, places of residence, education, prior real estate licenses, and such other information necessary to identify the applicant and determine the applicant's qualifications and fitness for licensure. The application form for a business entity is described in Rule .0502 of this Section.

#### **A .0302 License Application and Fee**

(a) The fee for an original application of a broker or firm license shall be one hundred dollars (\$100.00).

(b) An applicant shall update information provided in connection with a license application in writing to the Commission or submit a new application form that includes the updated information without request by the Commission to ensure that the information provided in the application is current and accurate. Failure to submit updated information prior to the issuance of a license may result in disciplinary action against a broker or firm in accordance with G.S. 93A-6(b)(1). Upon the request of the Commission, an applicant shall submit updated information or provide additional information necessary to complete the application within 45 days of the request or the license application shall be canceled.

(c) The license application of an individual shall be canceled if the applicant fails to:

- (1) pass a scheduled license examination within 180 days of filing a complete application pursuant to Rule .0301 of this Section; or
- (2) appear for and take any scheduled examination without having the applicant's examination postponed or absence excused pursuant to Rule .0401 of this Subchapter.

#### **A .0304 Waiver of 75-Hour Prelicensing Education Requirement**

The Commission shall grant a waiver of the 75-hour education program pursuant to G.S. 93A-4(a) if an applicant submits:

- (1) an application pursuant to Rule .0301 of this Section;
- (2) a written request for a waiver of the 75-hour education program; and either
- (3) a transcript and copy of a baccalaureate or higher degree in the field of real estate, real estate brokerage, real estate finance, real estate development, or a law degree conferred on the applicant from any college or university accredited by a college accrediting body recognized by the U. S. Department of Education; or
- (4) a course completion certificate or transcript evidencing the completion of a prelicensing education program in another state that:
  - (a) consisted of at least 75-hours of instruction;
  - (b) was completed within one year prior to license application while the applicant was a resident of said state; and

(c) is parallel to the topics and timings described in the Commission's Prelicensing course syllabus.

#### **A .0305 Petition for Predetermination**

(a) An individual who wishes to file a petition for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a real estate license shall submit a petition on the Commission's website.

(b) The petition shall include the petitioner's:

- (1) legal name;
- (2) mailing, physical, and email addresses;
- (3) social security number;
- (4) date of birth;
- (5) telephone number;
- (6) places of residence for the past seven years;
- (7) employment history during the last three years or since the date of the petitioner's last criminal conviction, whichever is greater;
- (8) criminal record report prepared by the Commission's approved independent vendor pursuant to G.S. 93B-8.1 no more than 60 days prior to the date of petition;
- (9) written statement describing the circumstances surrounding the commission of the crime(s);
- (10) written statement of any rehabilitation efforts, if applicable;
- (11) rehabilitative drug or alcohol treatments, if applicable;
- (12) Certificate of Relief granted pursuant to G.S. 15A-173.2, if applicable;
- (13) affidavits or other written documents, including character references;
- (14) certification that the information is true and accurate; and
- (15) signature.

(c) The fee for a petition for predetermination shall be forty-five dollars (\$45.00).

### **SECTION .0400 EXAMINATIONS**

#### **A .0401 Scheduling Examinations**

(a) An applicant who is required and qualified to take the licensing examination shall be provided a notice of examination eligibility that shall be valid for a period of 180 days and for a single administration of the licensing examination. Upon receipt of the notice of examination eligibility, the applicant shall contact the Commission's authorized testing service to pay for and schedule the examinations in accordance with procedures established by the testing service. The testing service will schedule applicants for examination by computer at their choice of one of the testing locations and will notify applicants of the time and place of

their examinations.

(b) An applicant may postpone a scheduled examination provided the applicant makes the request for postponement directly to the Commission's authorized testing service in accordance with procedures established by the testing service. An applicant's examination shall not be postponed beyond the 180 day period allowed for taking the examination without first refiling another complete application with the Commission.

A request to postpone a scheduled licensing examination without complying with the procedures for re-applying for examination described in Rule .0403 of this Subchapter shall be granted only once unless the applicant satisfies the requirements for obtaining an excused absence stated in Paragraph (c) of this Rule.

(c) An applicant may be granted an excused absence from a scheduled examination if the applicant provides evidence that the absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. A request for an excused absence must be promptly made in writing and must be supported by documentation verifying the reason for the absence. The request must be submitted directly to the testing service in accordance with procedures established by the testing service. A request for an excused absence from an examination shall be denied if the applicant cannot be rescheduled and examined prior to expiration of the 180 day period allowed for taking the examination without first refiling another complete application with the Commission.

#### **A .0402 Examination Subject Matter, Format, and Passing Scores**

(a) The real estate licensing examination shall test applicants on the following general subject areas:

- (1) real estate law;
- (2) real estate brokerage law and practices;
- (3) the Real Estate License Law, rules of the Commission, and the Commission's trust account guidelines;
- (4) real estate finance;
- (5) real estate valuation (appraisal);
- (6) real estate mathematics; and
- (7) related subject areas.

(b) The real estate licensing examination shall consist of two sections, a "national" section on general real estate law, principles, and practices and a "state" section on North Carolina real estate law, principles, and practices. Unless the "national" section is waived by the Commission for an applicant based on its authority under G.S. 93A-9, an applicant shall pass both sections of the examination in order to pass the examination.

(c) In order to pass the real estate licensing examination, an applicant shall attain a score for each required section of the examination that is at least equal to the passing score es-

tablished by the Commission for each section of the examination in compliance with psychometric standards for establishing passing scores for occupational licensing examinations as set forth in the "Standards for Educational and Psychological Testing" jointly promulgated by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. The "Standards for Educational and Psychological Testing" are incorporated by referencing, including subsequent amendments and editions. A copy of the "Standards for Educational and Psychological Testing" is available for inspection at the North Carolina Real Estate Commission's office, whose address is posted on its website at [www.ncrec.gov](http://www.ncrec.gov). Copies of the "Standards for Educational and Psychological Testing" may be ordered from the American Education Research Association through its website at [www.aera.net](http://www.aera.net) at a charge of \$69.95 per copy plus shipping.

(d) An applicant who passes one or both sections of the examination will receive only a score of "pass" for the section(s) passed; however, an applicant who fails one or both sections of the examination shall be informed of their actual score for the section(s) failed. An applicant who is required to pass both sections of the examination shall do so within his or her 180-day examination eligibility period, and if the applicant passes only one section during his or her 180-day examination eligibility period, then that passing score shall not be recognized if the applicant subsequently re-applies to the Commission for a license.

(e) A passing examination score obtained by a license applicant for both sections of the examination, or for the "state" section if that is the only section an applicant is required to pass, shall be recognized as valid for a period of one year from the date the examination was passed. During this time, the applicant shall satisfy any remaining requirements for licensure that were pending at the time of examination. The running of the one-year period shall be tolled upon mailing the applicant the letter set forth in 21 NCAC 58A .0616(c) informing the applicant that his or her moral character is in question, and shall resume running when the applicant's application is either approved for license issuance, denied, or withdrawn. The application of an applicant with a passing examination score who fails to satisfy all remaining requirements for licensure within one year shall be canceled and the applicant shall be required to reapply and satisfy all requirements for licensure, including retaking and passing the license examination, in order to be eligible for licensure.

#### **A .0403 Re-applying for Examination**

(a) An individual whose license application has been canceled pursuant to Rule .0302(c) of this Subchapter and whose 180 day examination eligibility period has expired who wishes to be rescheduled for the real estate license examination must re-apply to the Commission by filing a complete license application as described in Rule .0301 of this

Subchapter and paying the prescribed application fee. Subsequent examinations shall be scheduled in accordance with Rule .0401 of this Section.

(b) An individual whose license application has been canceled pursuant to Rule .0302(c) of this Subchapter who wishes to be rescheduled for the license examination before the expiration of his or her 180 day examination eligibility period may utilize an abbreviated electronic license application and examination rescheduling procedure by directly contacting the Commission's authorized testing service, paying both the license application fee and the examination fee to the testing service, and following the testing service's established procedures.

(c) An applicant who fails one or both sections of the license examination shall not be allowed to retake the failed section(s) of the examination for at least 10 calendar days.

#### **A .0404 Examination Related Misconduct**

(a) When taking a license examination, an applicant shall not:

- (1) cheat or attempt to cheat on the examination by any means, including giving or receiving assistance or using notes of any type;
- (2) communicate with any person other than an examination supervisor for any purpose in any manner;
- (3) have in his or her possession or utilize in any manner study materials or notes or any device that may be used to:
  - (A) communicate with others;
  - (B) access information; or
  - (C) record or store photographs, visual images, audio or other information about the examination;
- (4) have in his or her possession or utilize a calculator that:
  - (A) permits the storage, entry or retrieval of alphabetic characters; or
  - (B) is not silent, hand-held and either battery-powered or solar-powered;
- (5) have in his or her possession a wallet, pocket-book, bag or similar item that can be used to store materials prohibited by this Rule;
- (6) refuse to demonstrate to the examination supervisor that pockets on any item of clothing do not contain materials prohibited by this Rule;
- (7) leave or attempt to leave the testing area with any materials provided for the purpose of taking the examination or with any information, notes or other information about the content of the examination; or
- (8) refuse to comply with the instructions of the Commission and the Commission's test provider for taking the examination; or
- (9) disrupt in any manner the administration of the examination.

(b) Violation of this Rule shall result in dismissal from an examination, invalidation of examination scores, forfeiture of examination and application fees and denial of a real estate license, as well as for disciplinary action if the applicant has been issued a license.

#### **A .0405 Confidentiality of Examinations**

Licensing examinations are confidential. No applicant or licensee shall obtain, attempt to obtain, receive or communicate to other persons examination questions or answers. Violation of this Rule is grounds for denial of a real estate license if the violator is an applicant and disciplinary action if the violator is a licensee or becomes a licensee prior to the discovery of the violation by the Commission.

### **SECTION .0500 LICENSING**

#### **A .0502 Firm Licensing**

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker.

(b) An entity that changes its business form other than by conversion shall submit a new firm license application upon making the change and obtain a new firm license. An entity that converts to a different business entity in conformity with and pursuant to applicable North Carolina General Statutes shall not be required to apply for a new license. However, such converted entity shall provide the information required by this Rule in writing to the Commission within 10 days of the conversion and shall include the duplicate license fee pursuant to Rule .0101(c) of this Subchapter.

(c) Firm license application forms shall be available on the Commission's website or upon request to the Commission and shall require the applicant to set forth:

- (1) the legal name of the entity;
- (2) the name under which the entity will do business;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the entity's NC Secretary of State Identification Number if it is required to be registered with the Office of the NC Secretary of State;
- (6) each federally insured depository institution lawfully doing business in this State where the entity's trust account(s) will be held, if applicable;
- (7) the name, real estate license number, and signature of the proposed qualifying broker for the firm;
- (8) the address of and name of the proposed broker-in-charge for each office as defined in Rule .0110(a) of this Subchapter, along with a completed broker-in-charge designation form described in Rule .0110(f) of this Subchapter for each proposed bro-

ker-in-charge;

(9) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;

(10) any past revocation, suspension, or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;

(11) if a general partnership, a description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the partners, and the name of each partner. If a partner is an entity rather than a natural person, the name of each officer, partner, or manager of that entity, or any entity therein;

(12) if a limited liability company, a description of the applicant entity, including a copy of its written operating agreement or if no written agreement exists, a written description of the rights and duties of the managers, and the name of each manager. If a manager is an entity rather than a natural person, the name of each officer, partner, or manager of that entity, or any entity therein;

(13) if a business entity other than a corporation, limited liability company, or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;

(14) if a foreign business entity, a Certificate of Authority to transact business in North Carolina issued by the NC Secretary of State and an executed consent to service of process and pleadings; and

(15) any other information required by this Rule.

(d) When the authority of a business entity to engage in the real estate business is unclear in the application or in law, the Commission shall require the applicant to declare in the firm license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons, and similar information. For purposes of this Rule, the term "principal," when it refers to a person or entity, means any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner, or who holds any other comparable position.

(e) After filing a firm license application with the Commission, the entity shall be licensed provided that it:

(1) has one principal holding a broker license on active status in good standing who will serve as the qualifying broker; and

(2) employs and is directed by personnel licensed as a broker in accordance with this Chapter.

The qualifying broker of a partnership of any kind shall be a general partner of the partnership; the qualifying bro-

ker of a limited liability company shall be a manager of the company; and the qualifying broker of a corporation shall be an officer of the corporation. A licensed business entity may serve as the qualifying broker of another licensed business entity if the qualifying broker-entity has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying broker shall assure to the Commission the performance of the qualifying broker's duties with regard to both entities. A provisional broker may not serve as a qualifying broker.

(f) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(g) The qualifying broker of a business entity shall assume responsibility for:

(1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity as "office" and "branch office" are defined in Rule .0110(a) of this Subchapter;

(2) renewing the real estate broker license of the entity;

(3) retaining the firm's current pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;

(4) notifying the Commission of any change of business address or legal or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;

(5) notifying the Commission in writing of any change of his or her status as qualifying broker within 10 days following the change;

(6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter;

(7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as qualifying broker until a new qualifying broker has been designated with the Commission or, if no new qualifying broker is designated, for the period of time records are required to be retained by Rule .0108 of this Subchapter;

(8) notifying the Commission if, upon the termination of his or her status as qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter; and

(9) notifying the Commission regarding any reve-

nue suspension, revocation of Certificate of Authority, or administrative dissolution of the entity by the NC Secretary of State within 10 days of the suspension, revocation, or dissolution.

(h) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure.

(i) Upon receipt of notice from an entity or agency of this State that a licensed entity has ceased to exist or that its authority to engage in business in this State has been terminated by operation of law, the Commission shall cancel the license of the entity.

#### **A .0503 License Renewal**

(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on June 30 following issuance. Any broker desiring renewal of his or her license shall renew on the Commission's website within 45 days prior to license expiration and shall submit a renewal fee of forty-five dollars (\$45.00).

(b) During the renewal process, every individual broker shall provide an email address to be used by the Commission. The email address may be designated by the broker as private in order to be exempt from public records disclosures pursuant to G.S. 93A-4(b2).

(c) During the renewal process, every designated broker-in-charge shall disclose:

- (1) each federally insured depository institution lawfully doing business in this State where the trust account(s) for the broker-in-charge or the entity for which the broker-in-charge is designated is held, if applicable; and
- (2) any criminal conviction or occupational license disciplinary action that occurred within the previous year.

#### **A .0504 Active and Inactive License Status**

(a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. Subject to compliance with Rule .0110 of this Subchapter, the holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status shall not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate broker or any other party. A broker holding a license on inactive status must renew the license and pay the prescribed license renewal fee in order to continue to

hold the license. The Commission may take disciplinary action against a broker holding a license on inactive status for any violation of G.S. 93A or any rule adopted by the Commission, including the offense of engaging in an activity for which a license is required.

(b) A license issued to a provisional broker shall, upon initial licensure, be assigned to inactive status. A license issued to a firm or a broker other than a provisional broker shall be assigned to active status. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker may change the status of his or her license from active to inactive status by submitting a written request to the Commission. A provisional broker's license shall be assigned by the Commission to inactive status when the provisional broker is not under the active, direct supervision of a broker-in-charge. A firm's license shall be assigned by the Commission to inactive status when the firm does not have a qualifying broker with an active license. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker shall also be assigned to inactive status if, upon the second renewal of his or her license following initial licensure, or upon any subsequent renewal, he or she has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

(c) A provisional broker with an inactive license who desires to have the license placed on active status must comply with the procedures prescribed in Rule .0506 of this Section.

(d) A broker, other than a provisional broker, with an inactive license who desires to have the license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the broker, a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the name and address of any broker-in-charge, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker's status will be considered to be active. If the broker is eligible for license activation, the Commission shall send a written acknowledgment of the license activation to the broker and his or her affiliated broker-in-charge, if any. If neither the broker nor his or her affiliated broker-in-charge receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate his or her real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If either the broker or his or her affiliated broker-in-charge, if any, is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker shall terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(e) Upon an active, non-provisional broker's affiliation with a firm and broker-in-charge, the broker-in-charge of

the office where the broker will be engaged in the real estate business shall notify the Commission of the affiliation on a form provided by the Commission containing identifying information about the affiliating broker and the broker-in-charge, and the signature of the broker-in-charge. If neither the broker nor the broker-in-charge receive from the Commission a written acknowledgment of the license affiliation within 30 days of the date shown on the form, the broker and his or her broker-in-charge shall cease representing the broker as being affiliated with such broker-in-charge pending receipt of the written acknowledgment from the Commission.

(f) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation containing identifying information about the firm and its qualifying broker and satisfy the requirements of Rule .0110 of this Subchapter. If the qualifying broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the qualifying broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's qualifying broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the qualifying broker is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the qualifying broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(g) A person licensed as a broker under Section .1800 of this Subchapter shall maintain his or her license on active status at all times as required by Rule .1804 of this Subchapter.

#### **A .0505 Reinstatement of a License**

(a) The fee for reinstatement of a license that has been expired, revoked, or surrendered for less than two years shall be an amount equal to two times the current renewal license fee pursuant to Rule .0503 of this Section.

(b) The reinstatement application form is available on the Commission's website and shall include the applicant's:

- (1) legal name;
- (2) mailing, physical, and email address;
- (3) telephone number;
- (4) previous license number;
- (5) Secretary of State identification number, if applicable;
- (6) social security number and date of birth, if applicable;
- (7) qualifying broker and broker-in-charge's legal name and license number, if applicable;
- (8) criminal record report prepared within six

months of application;

(9) certification; and

(10) signature.

(c) An individual seeking reinstatement of a license that has been expired for less than six months shall:

(1) submit the reinstatement fee pursuant to Paragraph (a) of this Rule;

(2) disclose any criminal conviction or disciplinary action pursuant to Rule .0113 of this Section, including any conviction or disciplinary action incurred while the individual's license was expired; and

(3) satisfy the license activation requirements of Rule .1703 of this Subchapter, if applicable.

(d) An individual seeking reinstatement of a license that has been expired for six months but no more than two years or revoked or surrendered for no more than two years shall:

(1) submit a complete reinstatement application pursuant to Paragraph (b) of this Rule;

(2) submit the reinstatement fee pursuant to Paragraph (a) of this Rule; and

(3) pass:

(A) one Postlicensing course within six months prior to submitting his or her reinstatement application;

(B) the "National" and "State" sections of the current license examination within 180 days after submitting his or her reinstatement application; or

(C) the "State" section of the current license examination within 180 days after submitting his or her reinstatement application if the individual possesses an active broker license in another state.

(e) An individual seeking reinstatement of a license that has been expired, revoked, or surrendered for more than two years shall submit an original license application and fee pursuant to G.S. 93A-4 and Rules .0301 and .0302 of this Subchapter.

(f) A license shall be reinstated with the same license number and status, either full or provisional, it held before expiration, revocation, or surrender if reinstated within three years from the expiration, revocation, or surrender and shall be effective as of the date of reinstatement, not the date of original licensure. If a license is reinstated after three years from the expiration, revocation, or surrender, the license shall be on provisional broker status pursuant to G.S. 93A-4(a1).

(g) A business entity seeking reinstatement of a license shall submit:

(1) the reinstatement fee pursuant to Paragraph (a) of this Rule if the license has been expired for less than six months;

(2) the reinstatement fee and a complete reinstatement application pursuant to Paragraphs (a) and (b) of this Rule if the license has been expired for six months but no more than two years or revoked or

surrendered for no more than two years;

(3) an original firm license application pursuant to G.S. 93A-4 and Rules .0301, .0302, and .0502 of this Subchapter if the license has been expired, revoked, or surrendered for more than two years.

(h) A broker seeking reinstatement of a license shall satisfy to the Commission that he or she possesses the character requisites pursuant to G.S. 93A-4(b).

#### **A .0506 Provisional Broker to be Supervised by Broker-in-Charge**

(a) A provisional broker may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status pursuant to Rule .0504 of this Section and he or she is supervised by the broker-in-charge of the real estate firm or office with which the provisional broker is affiliated. A provisional broker shall be supervised by only one broker-in-charge at a time except that a provisional broker may be supervised by no more than two brokers-in-charge of two licensed affiliated firms located in the same physical location and acting as co-listing or co-selling agents in real estate transactions. When a provisional broker is supervised by more than one broker-in-charge, both brokers-in-charge shall bear all supervision responsibility at all times.

(b) Upon a provisional broker's affiliation with a real estate broker or brokerage firm, the broker-in-charge of the office where the provisional broker will be engaged in the real estate business shall file with the Commission a License Activation and Broker Affiliation form that sets forth the:

- (1) provisional broker's:
  - (A) name;
  - (B) license number, type of license, and current license status;
  - (C) physical, mailing, and emailing addresses;
  - (D) public and private phone numbers;
  - (E) completed Postlicensing courses, if necessary;
  - (F) completed continuing education courses, if necessary; and
  - (G) signature.
- (2) broker-in-charge's:
  - (A) name;
  - (B) license number;
  - (C) firm's name and license number;
  - (D) physical, mailing, and emailing addresses;
  - (E) public and private phone numbers; and
  - (F) signature.

(c) Upon the submission of the License Activation and Broker Affiliation form, the provisional broker may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the provisional broker and broker-in-charge do not receive from the Commission a written acknowledgment of the provisional broker supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the

form, the provisional broker shall cease all real estate brokerage activities pending receipt of the written acknowledgment from the Commission.

(d) A broker-in-charge shall supervise the provisional broker in a manner that assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a provisional broker as prescribed in this Rule may be subject to disciplinary action pursuant to Rule .0110 of this Subchapter.

(e) Upon the termination of the supervisory relationship between a provisional broker and his or her broker-in-charge, the provisional broker and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following the termination.

#### **A .0507 Payment of License Fees**

Checks, credit cards, and other forms of payment given the Commission for fees due which are returned unpaid shall be considered cause for license denial, suspension, or revocation.

#### **A .0511 Licensing of Persons Licensed in Another Jurisdiction**

(a) For purposes of this Rule, "Jurisdiction" shall mean a state, territory, or possession of the United States or Canada.

(b) An individual seeking a real estate license who, at the time of application, holds a current real estate salesperson or broker license in another jurisdiction that has been on active status in good standing within the three years prior to application may satisfy the 75-hour prelicensing education program and examination requirements prescribed in G.S. 93A-4 by electing to either:

(1) pass the "State" section of that examination. A person qualifying for licensure under this provision shall be issued a North Carolina broker license on a status comparable to the category of license held by the person in the jurisdiction where the qualifying license is held; or

(2) be issued a North Carolina broker license on provisional status only and then comply with the provisions of G.S. 93A-4(a1).

(c) Brokers who were licensed in North Carolina by reciprocity shall be entitled to retain such license indefinitely, unless suspended, revoked, or surrendered pursuant to G.S. 93A-6, so long as the license is renewed or is reinstated pursuant to Rule .0505 of this Section.

(d) A military-trained or military spouse applicant seeking a temporary practice permit shall submit an application on a form available on the Commission's website. The military-trained or military spouse temporary permit application shall include applicant's:

- (1) legal name;
- (2) mailing, physical, and email address;
- (3) telephone number;

- (4) social security number;
- (5) date of birth;
- (6) criminal background report prepared within six months of application;
- (7) occupational licensing history, including any disciplinary actions;
- (8) pending liens or judgements;
- (9) certification of equivalent training or experience, by submission of either a:

- (A) military occupational specialty certificate that is substantially equivalent to or exceeds the requirements for licensure;

- (B) certification that the applicant has engaged in the active practice of brokerage for at least two of the five years preceding the date of the application; or

- (C) certification, issued within six months of application, of a current real estate salesperson or broker license in another jurisdiction that has been on active status within 3 years of application;

- (10) certification; and

- (11) signature.

(e) An applicant who is issued a temporary practice permit pursuant to Paragraph (d) of this Rule shall remain a provisional broker for the duration of the permit.

#### **A .0512 Death or Incapacity of Sole Proprietor**

(a) If a licensed real estate broker engaged in business as a sole proprietor pursuant to G.S. 93A-2(a) dies or becomes incapacitated, the Commission shall issue a temporary license to the executor or administrator of the estate of the deceased sole proprietor broker or to the court-appointed fiduciary of the incapacitated sole proprietor broker upon receipt of the following:

- (1) a written notification to the Commission of the date of the broker's death or disability; and

- (2) a certified copy of the court order appointing the executor, administer, or fiduciary.

(b) A temporary license shall be valid only for the purpose of distributing trust money held or paying commissions owed by the sole proprietor broker at the time of death or incapacity, but shall not otherwise entitle the holder to undertake any action for which a real estate license is required.

(c) The temporary license shall be valid for one year from issuance.

### **SECTION .0600 REAL ESTATE COMMISSION HEARINGS**

#### **A .0601 Complaints/Inquiries/Motions/Other Pleadings**

(a) Any individual may file a complaint against a broker at any time. A complaint shall:

- (1) be in writing;
- (2) identify the respondent broker or firm; and
- (3) apprise the Commission of the facts which form the basis of the complaint.

(b) A complaint may be amended by submitting the revised complaint in writing to the Commission.

(c) When investigating a complaint, the scope of the Commission's investigation shall not be limited only to matters alleged in the complaint.

(d) All answers, motions, or other pleadings relating to contested cases before the Commission shall be:

- (1) in writing or made during the hearing as a matter of record; and

- (2) apprise the Commission of the matters it alleges or answers.

(e) During the course of an investigation, any broker that receives a Letter of Inquiry from the Commission shall submit a written response within 14 days of receipt. The Commission, through its legal counsel or other staff, may send a broker a Letter of Inquiry requesting a response. The Letter of Inquiry, or attachments thereto, shall set forth the subject matter being investigated. The response shall include:

- (1) a disclosure of all requested information; and

- (2) copies of all requested documents.

(f) Persons who make complaints are not parties to contested cases, but may be witnesses.

#### **A .0607 Petition to Reopen Proceeding**

(a) After a final decision has been reached by the Commission in a contested case, a party may petition the Commission to reconsider a case. Petitions will not be granted except when the petitioner can show that the reasons for reconsidering the case are to introduce newly discovered evidence which was not presented at the initial hearing because of some justifiable, excusable or unavoidable circumstance. Upon the running of the 30 day period for seeking judicial review, such petitions will have no effect.

(b) Decisions on petitions to reopen cases are within the discretion of the Commission.

#### **A .0610 Subpoenas**

(a) Subpoenas issued in preparation for, or in the conduct of, a contested case pending before the Commission shall be issued in the name of the Commission and shall be signed by the Commission's legal counsel, chairman, vice chairman, the officer presiding at the hearing if a member of the Commission other than the chairman or vice chairman has been designated to preside.

(b) After a notice of hearing in a contested case has been issued and served upon a respondent or, in a case concerning an application for licensure, the applicant, the respondent, or the attorney for the respondent or applicant may request subpoenas for the attendance of witnesses and the production of evidence. The subpoenas may be signed by the respondent or applicant, or the respondent's or appli-

cant's attorney.

(c) All subpoenas issued in connection with a contested case pending before the Commission shall be on a form approved by the Commission. Subpoena forms shall be provided by the Commission without charge upon request.

(d) Motions to quash a subpoena issued in preparation for, or in connection with, a contested case pending before the Commission shall be submitted to the Commission in writing and shall clearly state the grounds therefor. The disposition of any motion to quash a subpoena shall be made by the chairman of the Commission in his or her discretion. If the chairman is unavailable, then the vice chairman or other Commission member designated to preside over the hearing may dispose of such a motion in the chairman's place.

#### **A .0612 Presiding Officer**

The Commission may designate any of its members to preside over the hearing in a contested case. When no designation is made, the Chairman of the Commission shall preside, or, in his or her absence, the Vice Chairman shall preside. The presiding officer shall rule on motions or other requests made in a contested case prior to the conduct of the hearing in that case except when the ruling on the motion would be dispositive of the case. When the ruling on a motion or request would be dispositive of the case, the presiding officer shall make no ruling and the motion or request shall be determined by a majority of the Commission.

#### **A .0614 Summary Suspension**

(a) If the Commission finds that the public health, safety, or welfare requires emergency action, it may, pursuant to G.S. 150B-3(c), summarily suspend a license without a hearing or opportunity for the licensee to be heard. A motion for summary suspension shall be presented to the Chairman of the Commission by counsel for the State and may be presented ex parte. The motion shall be supported by an affidavit of a person with first-hand knowledge of the facts alleged which require emergency action.

(b) The Commission shall, when it summarily suspends a license, immediately schedule a hearing, to occur at the earliest practicable date, on the merits of the charges set out in a notice of hearing issued contemporaneously with the order of summary suspension. The motion, supporting affidavit, order for summary suspension and notice of hearing shall be served on the licensee as soon as possible and the summary suspension shall be effective no earlier than the date of service of the summary suspension order on the licensee. The order of summary suspension shall remain in effect until the Commission vacates it.

(c) A summarily suspended licensee may petition the Commission to vacate the summary suspension order. If the Chairman of the Commission finds that the summary suspension order was issued in error or on insufficient factual grounds to justify emergency action, the Chairman of the Commission may vacate the summary suspension order.

(d) Neither an order of summary suspension nor a denial of a motion to vacate an order of summary suspension is a final agency decision.

#### **A .0615 Settlements**

The Commission may consider disposing of any contested matter before it by consent order or upon stipulation of the respondent and the Commission's legal counsel. The Commission may approve or reject any proposal to dispose of a contested matter by consent or stipulation, however, any matter to which a respondent and the Commission's legal counsel have stipulated which is rejected by the Commission shall not thereafter bind the parties or the Commission. Except as may be otherwise allowed by the presiding officer, all proposals to dispose of a contested matter must be in written form and signed by the respondent not later than two days prior to the date set for the hearing of the matter, excluding any days during which the Commission's offices are closed.

#### **A .0616 Procedures For Requesting Hearings When Applicant's Character Is In Question**

(a) When the moral character of an applicant for licensure or approval is in question, the applicant shall not be licensed or approved until the applicant has affirmatively demonstrated that the applicant possesses the requisite honesty, truthfulness, integrity, good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the real estate brokerage business. For the purposes of this Rule, applicant means any person or entity making application for licensure as a real estate broker or for licensure or approval as an instructor.

(b) When the applicant is an entity, it shall be directed and controlled by persons who possess the requisite honesty, truthfulness, integrity, good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the real estate brokerage business.

(c) When the character of an applicant is in question, the Commission shall defer action upon the application until the applicant is notified by letter. The letter informing the applicant that his or her moral character is in question shall be sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this letter to request a hearing before the Commission. If the applicant fails to request a hearing within this time or if a properly addressed letter is returned to the Commission undelivered, applicant's right to a hearing shall be considered waived and the application shall be deemed denied. If the applicant makes a timely request for a hearing in accordance with the provisions of this Rule, the Commission shall provide the applicant with a Notice of Hearing and hearing as required by G.S. 150B, Article 3A .

(d) Nothing in this Rule shall be interpreted to prevent an unsuccessful applicant from reapplying for licensure or approval if such application is otherwise permitted by law.

## **SECTION .0700 PETITIONS FOR RULES**

### **A .0701 Petition For Rule-Making Hearings**

(a) Any person wishing to file a petition requesting the adoption, amendment or repeal of a rule by the Commission shall file a written petition with the executive director.

(b) The petition shall include the following information:

- (1) name, address and occupation of petitioner;
- (2) a summary of the proposed action (adoption, amendment, or repeal of a rule or rules);
- (3) a draft of the proposed rule or other action;
- (4) a complete statement of the reason for the proposed action; and
- (5) an identification of the persons or class of persons most likely to be affected by the proposed action.

(c) The Commission shall decide whether to allow or deny a rule-making petition.

## **SECTION .0900 DECLARATORY RULINGS**

### **A .0902 Requests for Rulings: Disposition of Requests**

(a) All requests for declaratory rulings shall be written and filed with the Commission. The request must contain the following information:

- (1) the name, address and signature of petitioner;
- (2) a concise statement of the manner in which petitioner is aggrieved by the rule or statute in question, or its potential application to him or her;
- (3) a statement of the interpretation given the statute or rule in question by petitioner;
- (4) a statement of the reasons, including any legal authorities, in support of the interpretation given the statute or rule by petitioner.

(b) The Commission shall either deny the request, stating the reasons therefore, or issue a declaratory ruling. The Commission may deny a request for a declaratory ruling when the Commission determines that:

- (1) the petition does not comply with the requirements of Paragraph (a) of this Rule;
- (2) the subject matter is one concerning which the Commission is without authority to make a decision binding the agency or the petitioner;
- (3) the petitioner is not aggrieved by the rule or statute in question or otherwise has insufficient interest in the subject matter of the request;
- (4) there is reason to believe that the petitioner or

some other person or entity materially connected to the subject matter of the request is acting in violation of the real estate license law or the rules adopted by the Commission; or

(5) the subject matter of the request is the subject of litigation, legislation, or rulemaking.

(c) The Commission shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, an investigation by the Real Estate Commission or contested case before the Commission.

## **SECTION .1400 REAL ESTATE EDUCATION AND RECOVERY FUND**

### **A .1401 Application for Payment**

(a) Any person or entity desiring to obtain payment from the Real Estate Education and Recovery Fund shall file an application with the Commission on a form provided by the Commission. The form shall require the following information concerning the applicant and the claim: the applicant's name and address, the amount of the claim, a description of the acts of the broker which constitute the grounds for the claim and a statement that all court proceedings are concluded. With the form, the applicant shall submit copies of the civil complaint, judgment, and the return of execution marked as unsatisfied. If the application is incomplete or not filed in correct form, or if the Commission is without jurisdiction over the claim or the parties, counsel for the Commission may file a motion to dismiss the application. The Commission shall conduct a hearing on the motion at which the only issues to be determined shall be whether the application is complete or in correct form or whether the Commission has jurisdiction over the claim or the parties.

(b) Forms for application for payment from the Real Estate Education and Recovery Fund shall be available from the Commission on request.

### **A .1402 Multiple Claims**

(a) If at any time the Commission has notice of more than one application or potential claim for payment from the Real Estate Education and Recovery Fund arising out of the conduct of a single broker, the Commission may, in its discretion, direct that all applications filed before a date determined by the Commission be consolidated for hearing and payment.

(b) Upon directing that claims be consolidated as provided in Paragraph (a) of this Rule, the Commission shall issue to the broker and the applicants and potential claimants an Order of Consolidation setting forth the deadline for filing all applications to be consolidated. Upon the passing of the deadline, the Commission may, in its discretion, either extend the deadline or issue to the broker and all applicants a notice of the time, date and place set for the hearing on the consolidated applications.

(c) In exercising its discretion as provided in Paragraphs (a) and (b) of this Rule, the Commission shall consider the following factors:

- (1) the number of claim applications or potential claims of which it has notice;
- (2) the amount of each claim;
- (3) the status of the underlying civil action in each claim;
- (4) the length of time each claim has been pending since the Commission first received notice of the claim; and
- (5) whether consolidation of such claims or the extension of the deadline for filing applications to be consolidated will promote the fair and efficient administration and payment of monies from the Real Estate Education and Recovery Fund.

#### **A .1403 Notice of Hearing: Order/Payt From/Real Estate Education and Recovery Fund**

((a) The Commission shall give notice of the time, place and date of a hearing on a claim for payment from the Real Estate Education and Recovery Fund to any applicant and the broker.

(b) After conducting a hearing, the Commission shall issue an order either authorizing payment or denying the claim, in whole or in part. This order shall be served upon the broker and any applicant.

(c) The existence of subsequent notices of potential claims or subsequent applications shall not be considered by the Commission in the issuance of an Order for Payment in those cases where the award is allowable but must be reduced pursuant to the provisions of G.S. 93A-21.

#### **A .1404 Exhausted Liability Limits**

Applications for payment from the Real Estate Education and Recovery Fund received or considered by the Commission after the liability of the Real Estate Education and Recovery Fund as described in G.S. 93A-21 has been exhausted shall be dismissed.

### **SECTION .1600 DISCRIMINATORY PRACTICES PROHIBITED**

#### **A .1601 Fair Housing**

Conduct by a licensee which violates the provisions of the State Fair Housing Act constitutes improper conduct in violation of G.S. 93A-6(a)(10).

### **SECTION .1700 MANDATORY CONTINUING EDUCATION**

#### **A .1701 Purpose and Applicability**

This Section describes the continuing education require-

ment for real estate brokers authorized by G.S. 93A-38.5, establishes the continuing education requirement to change a license from inactive status to active status, establishes attendance requirements for continuing education courses, establishes the criteria and procedures relating to obtaining an extension of time to complete the continuing education requirement, establishes the criteria for obtaining continuing education credit for an unapproved course or related educational activity, and addresses other similar matters.

#### **A .1702 Continuing Education Requirement**

(a) Except as provided in Rules .1708 and .1711 of this Section, a broker shall complete eight credit hours of real estate continuing education courses approved pursuant to 21 NCAC 58H within one year prior to the expiration of the license as follows:

- (1) four credit hours of elective courses; and
- (2) four hours of either:
  - (A) the "General Update Course;" or
  - (B) for a broker with BIC Eligible status, the "Broker-In-Charge Update Course" in lieu of the "General Update Course."

(b) A BIC or broker who takes the General Update Course rather than the Broker-In-Charge Update Course shall receive continuing education credit for taking such course only for the purpose of retaining his or her license on active status and shall not be considered to have satisfied the requirement to take the Broker-In-Charge Update Course in order to retain his or her BIC Eligible status.

(c) Continuing education courses shall be completed upon the second renewal following the initial licensure and upon each subsequent annual renewal.

(d) The broker shall provide the course completion certificate upon request of the Commission.

(e) No continuing education shall be required to renew a broker license on inactive status. In order to change a license from inactive status to active status, the broker shall satisfy the continuing education requirement described in Rule .1703 of this Section.

(f) No continuing education shall be required for a broker who is a member of the U.S. Congress or the North Carolina General Assembly in order to renew his or her license on active status.

(g) For purposes of this Rule, the terms "active status" and "inactive status" shall have the same definition as those in Rule .0504 of this Subchapter.

(h) For continuing education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued to a person, the reinstatement of a canceled, revoked or surrendered license, and any license expired for more than six months.

#### **A .1703 Continuing Education for License Activation**

(a) A broker requesting to change an inactive license to active status on or after the broker's second license renewal fol-

lowing his or her initial licensure shall have completed the continuing education as described in Paragraph (b) or (c) of this Rule, whichever is appropriate.

(b) If the inactive broker's license has not been on active status since the preceding July 1 and the broker has a deficiency in his or her continuing education record for the previous license period, the broker shall make up the deficiency and satisfy the continuing education requirement pursuant to Rule .1702 of this Section for the current license period in order to activate the license. Any deficiency may be made up by completing, during the current license period or previous license period, approved continuing education elective courses; however, such courses shall not be credited toward the continuing education requirement for the current license period. When crediting elective courses for purposes of making up a continuing education deficiency, the maximum number of credit hours that will be awarded for any course is four hours.

(c) If a broker's license has been on inactive status for more than two years and the broker has a deficiency in his or her continuing education record, the broker shall:

- (1) cure the continuing education deficiency for the current license year; and
- (2) complete two Postlicensing courses no more than six months prior to activation.

#### **A .1704 No Credit for Prelicensing or Postlicensing Courses**

No credit toward the continuing education requirement shall be awarded for completing a real estate prelicensing or postlicensing course.

#### **A .1705 Attendance And Participation Requirements**

(a) In order to receive credit for completing an approved continuing education course, a broker shall:

- (1) attend at least 90 percent of the scheduled instructional hours for the course;
- (2) provide his or her legal name and license number to the course sponsor;
- (3) present his or her pocket card or photo identification card, if necessary; and
- (4) personally perform all work required to complete the course.

(b) With the instructor or the sponsor's permission, a 10 percent absence allowance may be permitted at any time during the course, except that it may not be used to skip the last 10 percent of the course unless the absence is:

- (1) approved by the instructor; and
- (2) for circumstances beyond the broker's control that could not have been reasonably foreseen by the broker, such as:
  - (A) an illness;
  - (B) a family emergency; or
  - (C) acts of God.

#### **A .1706 Repetition of Courses**

A continuing education course may be taken only once for continuing education credit within a single license period.

#### **A .1707 Elective Course Carry-Over Credit**

A maximum of four hours of continuing education credit for an approved elective course taken during the current license period may be carried over to satisfy the continuing education elective requirement for the next following license period if the licensee receives no continuing education elective credit for the course toward the elective requirement for the current license period or the previous license period. However, if a continuing education elective course is used to wholly or partially satisfy the elective requirement for the current or previous license period, then any excess hours completed in such course which are not needed to satisfy the four-hour elective requirement for that license period may not be carried forward and applied toward the elective requirement for the next following license period.

#### **A .1708 Equivalent Credit**

(a) The Commission shall award a broker continuing education credit for teaching a Commission Update Course. A broker seeking continuing education credit for teaching a Commission Update Course shall submit a form, available on the Commission's website, that requires the broker to set forth the:

- (1) broker's name, license number, instructor number, address, telephone number, and email address;
- (2) Update Course number;
- (3) education provider's name and number;
- (4) education provider's address; and
- (5) date the course was taught.

(b) The Commission shall award a broker continuing education elective credit for teaching a Commission approved continuing education elective for the first time any given continuing education elective is taught. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the:

- (1) broker's name, license number, address, telephone number, and email address;
- (2) course title;
- (3) course number;
- (4) education provider's name and number;
- (5) education provider's address; and
- (6) date the course was taught.

(c) The Commission may award continuing education elective credit for completion of an unapproved course that the Commission finds equivalent to the elective course component of the continuing education requirement set forth in 21 NCAC 58H .0407(a). The broker shall submit a course completion certificate issued by the education provider, a copy of the course description or course outline, and a fifty dollar (\$50.00) fee for each course for which the broker seeks credit. A broker seeking continuing education credit

for a course that is not approved by the Commission shall submit a form, available on the Commission's website, that requires the broker to set forth the:

- (1) broker's name, license number, address, telephone number, and email address;
- (2) course title;
- (3) number of instructional hours;
- (4) course instructor's name; and
- (5) education provider's name, address, telephone number, and email address.

(d) The Commission may award continuing education elective credit for developing a continuing education elective course that is approved by the Commission pursuant to 21 NCAC 58H .0400. However, a broker shall only receive credit for the year in which the continuing education elective is approved. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit the course title, the course number, the date of the course approval, and a fifty dollar (\$50.00) fee for each course for which the broker seeks credit.

(e) The Commission may award continuing education elective credit for authoring a real estate textbook. However, a broker shall receive credit for any single textbook only once. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit the title page of the textbook, showing the title, publisher, and publication date, the table of contents, and a fifty dollar (\$50.00) fee for each textbook for which the licensee seeks credit.

(f) The Commission may award continuing education elective credit for authoring of a scholarly article on a real estate topic published in a professional journal or periodical. A broker shall receive credit for any single article only once. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit a copy of the article, proof of publication, and a fifty dollar (\$50.00) fee for each article for which the broker seeks credit.

(g) In order for any application for equivalent credit to be considered and credits applied to the current licensing period, a complete application, the appropriate fee, and all supporting documents shall be received by the Commission no later than 5:00 p.m. on June 17.

(h) Any equivalent continuing education credit awarded under this Rule shall be applied first to make up any continuing education deficiency for the previous license period

and then to satisfy the continuing education requirement for the current license period; however, credit for an unapproved course or educational activity, other than teaching an approved elective course, that was completed during a previous license period shall not be applied to a subsequent license period.

#### **A .1709 Extensions of Time to Complete Continuing Education**

(a) A broker on active status may request an extension of time to satisfy the continuing education requirement for the current license period if the broker was unable to obtain the necessary education due to an incapacitating illness, military deployment, or other circumstance that existed for a portion of the license period and that constituted a severe hardship.

(b) Requests for an extension of time shall be submitted on a form available on the Commission's website that requires the broker to set out the broker's name, mailing address, license number, telephone number, email address, and a description of the incapacitating illness or other circumstance. The requesting broker shall submit, along with the form, supporting documentation, such as a written physician's statement, deployment orders, or other corroborative evidence, demonstrating that compliance with the continuing education requirement would have been impossible or burdensome.

(c) All requests for an extension of time shall be received by the Commission by 5:00 p.m. on June 10 of the licensing period for which the extension is sought.

(d) If an extension of time is granted, the broker shall be permitted to renew his or her license on active status. The broker's license shall automatically change to inactive status if the broker fails to satisfy the continuing education requirement prior to the end of the extension period.

(e) In no event shall an extension of time be granted that extends the continuing education requirement deadline beyond June 10 of the license year following the license year in which the request is made.

#### **A .1710 Denial or Withdrawal of Continuing Education Credit**

(a) The Commission shall deny continuing education credit claimed by a broker or reported by an education provider for a broker, and shall withdraw continuing education credit previously awarded by the Commission to a broker upon finding that the broker:

- (1) or education provider provided incorrect or incomplete information to the Commission concerning continuing education completed by the broker;
- (2) failed to comply with the attendance requirement established by Rule .1705 of this Section; or
- (3) was mistakenly awarded continuing education credit due to an administrative error.

(b) If an administrative error or an incorrect report by an education provider results in the denial or withdrawal of continuing education credit for a broker, the Commission

shall, upon the written request of the broker, grant the broker an extension of time to satisfy the continuing education requirement.

(c) A broker who obtains or attempts to obtain continuing education credit through misrepresentation of fact, dishonesty, or other improper conduct shall be subject to disciplinary action pursuant to G.S. 93A-6.

#### **A .1711 Continuing Education Required of Nonresident Brokers**

(a) To be considered a nonresident for continuing education purposes, a real estate broker licensed in North Carolina shall not have a North Carolina business address, mailing address, or residence address at the time he or she applies for license renewal if he or she seeks to renew his or her license on active status. A nonresident North Carolina broker who wishes to renew his or her license on active status may satisfy the continuing education requirement by any one of the following means:

(1) A nonresident broker may, at the time of license renewal, hold a real estate license on active status in another state and certify on a form prescribed by the Commission that the broker holds such license. If at any time after renewal there is a change in the status of the out-of-state license, the nonresident broker shall notify the Commission within 10 days and request that his or her North Carolina license be placed on inactive status, or provide evidence to the Commission that he or she has satisfied Subparagraph (a)(2) of this Rule or the requirements of Rule .1702 of this Section.

(2) A nonresident broker may, within one year preceding license expiration, complete the Commission-prescribed Update course plus one Commission-approved continuing education elective course, or complete two Commission-approved continuing education elective courses.

(b) When a nonresident broker's license has been on inactive status for more than two years and the broker is satisfying the requirements of Rule .1703(c) of this Subchapter, if a distance education Postlicensing course is unavailable, a nonresident broker may apply for equivalent education credit for a Postlicensing course by submitting a written request that includes a course completion certificate or transcript evidencing the completion of an education program in another state that:

- (1) consisted of at least 30 hours of instruction;
- (2) was completed within six months prior to application; and
- (3) is parallel to the topics and timings described in the Commission's Postlicensing course syllabi.

(c) No carry-over credit to a subsequent license period shall be awarded for a course taken in another state that has not been approved by the North Carolina Real Estate Commission as an elective course pursuant to 21 NCAC 58H .0406.

#### **A .1712 Broker-in-Charge Course**

(a) The Broker-in-Charge Course is a 12-hour educational course that is required for a broker to attain BIC Eligible status under Rule .0110 of this Subchapter.

(b) In order to receive credit for completing the Broker-in-Charge Course, a broker shall:

- (1) personally perform all work required to complete the course; and
- (2) complete the 12-hour Broker-in-Charge Course no later than 30 days after the broker registers for the course and no later than the following June 10, whichever comes first.

(c) Upon completion of the 12-hour Broker-in-Charge Course, a broker shall receive four credit hours of elective continuing education. The four credit hours will be awarded in the license year in which the broker completes the 12-hour Broker-in-Charge Course.

### **SECTION .1800 LIMITED NONRESIDENT COMMERCIAL LICENSING**

#### **A .1801 General Provisions**

(a) Any person resident in a state or territory of the United States other than North Carolina may perform the acts or services of a real estate broker in North Carolina in transactions involving commercial real estate if said person first applies for and obtains a limited nonresident commercial real estate broker license as provided in this Section.

(b) Corporations, business associations and entities shall be ineligible for licensure under this Section.

(c) Nothing in this Section shall be construed to limit the rights of any person duly licensed as a real estate broker in North Carolina under the provisions of N.C.G.S. §§ 93A-4 or 93A-9(a).

#### **A .1802 Definitions**

For the purposes of this Section:

(1) "Commercial Real Estate" means any real property or interest therein, whether freehold or non-freehold, which at the time the property or interest is made the subject of an agreement for brokerage services:

(a) is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial or mining purposes or for multifamily residential purposes involving five or more dwelling units;

(b) may lawfully be used for any of the purposes listed in (1) above by a zoning ordinance adopted pursuant to the provisions of Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in (1) above which is under consideration by the government agency with author-

ity to approve the amendment; or  
(c) is in good faith intended to be immediately used for any of the purposes listed in (1) above by the parties to any contract, lease, option, or offer to make any contract, lease, or option.

(2) “Qualifying state” means the state or territory of the United States where an applicant for, and the holder of, a limited nonresident commercial license issued under this Section is licensed in good standing as a real estate broker or salesperson. The qualifying state must be the state or territory where the applicant or limited nonresident commercial licensee maintains his or her primary place of business as a real estate broker or salesperson. Under no circumstances may North Carolina be a qualifying state.

#### **A .1803 Requirements For Licensure; Application And Fee**

(a) A person desiring to obtain a broker license under this Section shall demonstrate to the Real Estate Commission that:

- (1) he or she is a resident of a state or territory of the United States other than North Carolina;
- (2) he or she is licensed as a real estate broker in a qualifying state and that said license is on active status and not in abeyance for any reason. If licensed as a salesperson, he or she shall also demonstrate that he or she is acting under the supervision of a broker in accordance with the applicable governing statutes or regulations in the qualifying state; and
- (3) he or she possesses the requisite honesty, truthfulness, integrity, and moral character for licensure as a broker in North Carolina.

A person applying for licensure under this Section shall not be required to show that the state or territory where he or she is currently licensed offers reciprocal licensing privileges to North Carolina brokers.

(b) A person desiring to be licensed under this Section shall submit an application on a form prescribed by the Commission and shall show the Commission that he or she has satisfied the requirements set forth in (a) of this rule. In connection with his or her application a person applying for licensure under this rule shall provide the Commission with a certification of license history from the qualifying state where he or she is licensed. He or she shall also provide the Commission with a report of his or her criminal history from the service designated by the Commission. An applicant for licensure under this Section shall be required to update his or her application as required by Rule .0302(c) of this Subchapter.

(c) The fee for persons applying for licensure under this Section shall be \$100 and shall be paid in the form of a certified check, bank check, cashier’s check, money order, or by credit card. Once paid, the application fee shall be non-refundable.

(d) If the Commission has received a complete application and the required application fee and if the Commission is satisfied that the applicant possesses the moral character necessary for licensure, the Commission shall issue to the applicant

a limited nonresident commercial real estate broker license.

#### **A .1804 Active Status**

Broker licenses issued under this Section shall be issued on active status and shall remain valid only so long as the licensee’s license in the qualifying state remains valid and on active status. In addition, a license issued to a salesperson under this Section shall remain valid only while the salesperson is acting under the supervision of a real estate broker in accordance with the applicable laws and rules in the qualifying state. Individuals licensed under this Section shall immediately notify the Commission if his or her license in the qualifying state lapses or expires, is suspended or revoked, made inactive, or is placed in abeyance for any reason.

#### **A .1805 Renewal**

(a) A license issued under this Section shall expire on June 30 following issuance unless it is renewed in accordance with the provisions of Rule .0503 and Rule .1711 of this Subchapter.

(b) The Commission shall not renew a license issued under this Section unless the licensee has demonstrated that he or she has complied with the requirements of paragraph (a) of this rule and that his or her license in the qualifying state is on active status in good standing and is not lapsed, expired, suspended, revoked, or in abeyance for any reason.

#### **A .1806 Limitations**

(a) A person licensed under this Section may act as a real estate broker in this state only if:

- (1) he or she does not reside in North Carolina;
- (2) the real property interest which is the subject of any transaction in connection with which he or she acts as a broker in this state is commercial real estate as that term is defined in Rule .1802 of this Section; and
- (3) he or she is affiliated with a resident North Carolina real estate broker as required in rule .1807 of this Section.

(b) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

#### **A .1807 Affiliation With Resident Broker**

(a) No person licensed under N.C.G.S. 93A-9(b) shall enter North Carolina to perform any act or service for which licensure as a real broker is required unless he or she has first entered into a brokerage cooperation agreement and declaration of affiliation with an individual who is a resident in North Carolina licensed as a North Carolina real estate broker.

(b) A brokerage cooperation agreement as contemplated by this rule shall be in writing and signed by the resident North Carolina broker and the non-resident commercial licensee. It shall contain:

- (1) the material terms of the agreement between the signatory licenses;
- (2) a description of the agency relationships, if any, which are created by the agreement among the nonresident commercial licensee, the resident North Carolina broker, and the parties each represents;
- (3) a description of the property or the identity of the parties and other information sufficient to identify the transaction which is the subject of the affiliation agreement; and
- (4) a definite expiration date.

(c) A declaration of affiliation shall be written and on the form provided by the Commission and shall identify the nonresident commercial licensee and the affiliated resident North Carolina licensee. It shall also contain a description of the duties and obligations of each as required by the North Carolina Real Estate License Law and rules duly adopted by the Commission. The declaration of affiliation may be a part of the brokerage cooperation agreement or separate from it.

(d) A nonresident commercial licensee may affiliate with more than one resident North Carolina broker at any time. However, a nonresident commercial licensee may be affiliated with only one resident North Carolina broker in a single transaction.

(e) A resident North Carolina broker who enters into a brokerage cooperation agreement and declaration of affiliation with a nonresident commercial licensee shall:

- (1) verify that the nonresident commercial licensee is licensed in North Carolina;
- (2) actively and directly supervise the nonresident commercial licensee in a manner which reasonably insures that the nonresident commercial licensee complies with the North Carolina Real Estate License Law and rules adopted by the Commission; and
- (3) promptly notify the Commission if the nonresident commercial licensee violates the Real Estate License Law or rules adopted by the Commission; and
- (4) insure that records are retained in accordance with the requirements of the Real Estate License Law and rules adopted by the Commission; and
- (5) maintain his or her license on active status continuously for the duration of the brokerage cooperation agreement and the declaration of affiliation.

(f) The nonresident commercial licensee and the affiliated resident North Carolina broker shall each retain in his or her records a copy of brokerage cooperation agreements and declarations of affiliation from the time of their creation and for at least three years following their expiration. Such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

#### **A .1808 Trust Monies**

A nonresident commercial broker acting as real estate broker in North Carolina shall deliver to the North Carolina res-

ident broker with whom he or she is affiliated all money belonging to others received in connection with the nonresident commercial broker's acts or services as a broker. Upon receipt of the funds, the resident North Carolina broker shall cause the funds to be deposited in a trust account in accordance with the provisions of Rule .0116 of this Subchapter.

#### **A .1809 Advertising**

In all advertising involving a nonresident commercial licensee's conduct as a North Carolina real estate broker and in any representation of such person's licensure in North Carolina, the advertising or representation shall conspicuously identify the nonresident commercial licensee as a "Limited Nonresident Commercial Real Estate Broker."

#### **A .1810 Payment Of Fees**

Commissions, fees, or other compensation earned by a nonresident commercial licensee shall not be paid directly to the licensee if said licensee is employed by or working for a real estate broker or firm. Instead, such fees or compensation shall be paid to the licensee's employing broker or firm.

### **SECTION .1900 POSTLICENSING EDUCATION**

#### **A .1901 Purpose and Applicability**

This section prescribes specific procedures relating to the postlicensing education requirement for real estate brokers as prescribed by G.S. 93A-4(a1).

#### **A .1902 Postlicensing Education Requirement**

(a) The 90-hour Postlicensing education program pursuant to G.S. 93A-4(a1) shall consist of the following three 30 instructional hour courses prescribed by the Commission:

- (1) Postlicensing Course 301;
- (2) Postlicensing Course 302; and
- (3) Postlicensing Course 303.

(b) A provisional broker as described in G.S. 93A-4(a1) shall complete all Postlicensing courses pursuant to Paragraph (a) of this Rule within 18 months following the date of initial licensure.

(c) If a provisional broker fails to complete the required Postlicensing courses pursuant to Paragraph (b) of this Rule, the provisional broker's license shall be placed on inactive status.

(d) A provisional broker seeking to activate a license that was placed on inactive status pursuant to Paragraph (c) of this Rule shall:

- (1) complete all three Postlicensing Courses described in Paragraph (a) of this Rule within the previous two years;
- (2) satisfy the continuing education requirements for license activation described in Rule .1703 of this

- Subchapter; and
- (3) file an activation form with the Commission pursuant to Rule .0504 of this Subchapter.

#### **A .1904 Denial Or Withdrawal Of Postlicensing Education Credit**

(a) The Commission may deny Postlicensing education credit claimed by a provisional broker or reported by an education provider for a provisional broker, and may withdraw Postlicensing education credit previously awarded by the Commission to a provisional broker and make appropriate license status changes for that broker upon finding that the provisional broker:

- (1) or education provider provided incorrect or incomplete information to the Commission concerning Postlicensing education completed by the provisional broker;
- (2) failed to comply with the attendance requirement pursuant to 21 NCAC 58H .0207; or
- (3) was mistakenly awarded Postlicensing education credit due to an administrative error.

(b) When Postlicensing education credit is denied or withdrawn by the Commission under Paragraph (a) of this Rule, the provisional broker shall remain responsible for satisfying the Postlicensing education requirement in G.S. 93A-4(a1).

(c) A broker who obtains or attempts to obtain Postlicensing education credit through misrepresentation of fact, dishonesty or other improper conduct is subject to disciplinary action pursuant to G.S. 93A-6.

#### **A .1905 Waiver of 90-hour Postlicensing Education Requirement**

a) A provisional North Carolina real estate broker may apply for a waiver of one or more of the three 30-hour Postlicensing courses described in Rule .1902 of this Section in the following circumstances:

- (1) the broker has obtained equivalent education to the Commission's Postlicensing course(s) pursuant to Rule .1902 of this Section. In this case, the waiver request shall include the course(s):
  - (A) jurisdiction of delivery;
  - (B) title;
  - (C) credit hours earned;
  - (D) beginning and end dates; and
  - (E) subject matter description.
- (2) the broker has obtained experience equivalent to 40 hours per week as a licensed broker or salesperson in another state for at least five of the seven years immediately prior to application for waiver, which shall include the applicant's:
  - (A) employer;
  - (B) title at employer;
  - (C) dates of employment;
  - (D) hours per week devoted to brokerage;
  - (E) approximate number of transactions;

- (F) areas of practice;
  - (G) approximate percentage of time devoted to each area of practice;
  - (H) description of applicant's role and duties;
  - (I) managing broker's name, telephone number, and email address; and
  - (J) official certification of licensure issued within the six months preceding application from a jurisdiction within a state, territory, or possession of the United States or Canada in which the applicant holds a current real estate license that has been active within the three years prior to application.
- (3) the broker has obtained experience equivalent to 40 hours per week as a licensed North Carolina attorney practicing in real estate matters for the two years immediately preceding application, which shall include the applicant's:
- (A) firm or practice name;
  - (B) law license number;
  - (C) dates of employment;
  - (D) hours per week devoted to real estate law practice;
  - (E) approximate number of closings conducted;
  - (F) description of practice; and
  - (G) manager or supervising attorney's name, telephone number, and email address, if applicable.

(b) The Commission shall not consider education or experience obtained in violation of any law or rule as fulfilling the requirements for waiver of the 90-hour postlicensing education requirement.

(c) A broker shall be ineligible for a waiver of the 90-hour postlicensing education requirement if the broker was issued a license pursuant to Rule .0511(b)(2) of this Section.

### **SECTION .2000 ANNUAL REPORTS**

#### **A .2002 Escrow account**

(a) The Commission shall establish an escrow account or accounts with a financial institution or institutions lawfully doing business in this State into which the Commission shall deposit and hold fees tendered during any period of time when, pursuant to G.S. 93B-2(d), the Commission's authority to expend funds has been suspended. The Commission shall keep funds deposited into its escrow account or accounts segregated from other assets, monies, and receipts for the duration of the suspension of the Commission's authority to expend funds.

(b) The Commission may deposit into and maintain in its escrow account such monies as may be required to avoid or eliminate costs associated with the account or accounts.

## **SECTION .2100 BROKERS IN MILITARY SERVICE**

### **A .2101 Applicability**

This Section shall apply to every broker whose license is not revoked, suspended, or surrendered, or who is otherwise the subject of a disciplinary order, and who is eligible for an extension of time to file a tax return under the provisions of G.S. 105-249.2 and 26 U.S.C. 7508.

### **.2102 Postponement of fees**

(a) A Broker described in 21 NCAC 58A .2101 shall not be required to pay renewal fees accrued during the time to be disregarded described in 26 U.S.C. 7508 until the June 30 immediately following the end of such time. The provisions of 21 NCAC 58A .0504 notwithstanding, during such time and until the June 30 immediately thereafter, the license of a broker other than a provisional broker shall remain on active status. During such time, the license of a provisional broker shall not expire, but shall remain on active status only if the provisional broker remains under the supervision of a broker-in-charge.

(b) All fees postponed by operation of this subsection shall be due and payable on June 30 immediately following the time to be disregarded as described in 26 U.S.C. 7508.

### **A .2103 Postponement of Continuing Education**

(a) A broker described by 21 NCAC 58A .2101 shall not be required to complete the continuing education required as a condition of license renewal for any June 30 license expiration date if that date falls during the time to be disregarded described in 26 U.S.C. 7508 until the June 10 immediately following the end of such time to be disregarded. If such time ends on or after May 1, the broker shall have until September 1 of the same year to complete the required continuing education.

(b) If a broker entitled to a postponement of continuing education under this Rule accumulates a deficiency in his or her continuing education of 16 or more hours because of the length of the time to be disregarded under 26 U.S.C. 7508, the broker may satisfy the deficiency by satisfying the requirements of 21 NCAC 58A .1703(c) established for an inactive broker returning to active status.

(c) The license of a broker entitled to postponement of continuing education under this Rule shall not be placed on inactive status for failure to complete continuing education until the deadline for completion set out in Paragraph (a) of this Rule has passed.

### **A .2104 Postponement of Postlicensing Education**

A broker described by Rule .2101 of this Section who is a provisional broker shall not be required to complete any postlicensing education during the period to be disregarded under 26 U.S.C. 7508 until the 180th day following the ending of such period. The broker's license shall not be placed on inactive status or cancelled for his or her failure to

complete the required postlicensing education prior to the deadline established in this Rule.

### **A .2105 Proof of Eligibility**

It shall be the responsibility of every broker eligible for the postponement of fees and education requirements established by this Section to demonstrate his or her eligibility and the beginning and ending of the time to be disregarded as described in 26 U.S.C. 7508.

## **SECTION .2200 BROKER PRICE OPINIONS AND COMPARATIVE MARKET ANALYSES**

### **A .2201 Applicability**

This Section applies to broker price opinions and comparative market analyses provided for a fee by a real estate broker whose license is not on provisional status pursuant to Article 6, Chapter 93A of the General Statutes.

### **A .2202 Standards**

(a) A broker performing a broker price opinion or comparative market analysis for a fee shall comply with all the requirements in G.S. 93A-83 and in this Rule.

(b) A broker shall only accept an assignment to provide a broker price opinion or comparative market analysis for a property if the broker has knowledge of the real estate market, direct access to real estate market sales or leasing data, and brokerage or appraisal experience in the subject property's geographic location.

(c) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker can exercise objective, independent judgment free of any influence from any interested party in the performance of his or her analysis of the facts relevant to determination of a probable selling or leasing price.

(d) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker has personally inspected the exterior and interior of that property, provided, however, that an inspection of the exterior or interior is not required if this is waived in writing by the party for whom the opinion or analysis is being performed.

(e) When developing a broker price opinion or comparative market analysis for a property or interest therein, a broker shall utilize methodology such as analysis of sales or income of sold or leased properties comparable to the subject property or capitalization as is appropriate for the assignment and type of subject property.

(f) When analyzing sales or income of properties comparable to the property that is the subject of a broker price opinion or comparative market analysis assignment, a broker shall comply with the following standards:

(1) The broker shall select from reliable information sources a minimum of three sold or leased comparable

properties for use in his or her analysis that are similar to the subject property with regard to characteristics such as property type, use, location, age, size, design, physical features, amenities, utility, property condition and conditions of sale. The comparable properties selected shall reflect the prevailing factors or market conditions influencing the sale or lease prices of similar properties in the subject property's local market; and (2) The broker shall make adjustments to the selling or leasing price of selected comparable properties for differences between the characteristics of the comparable properties and the subject property as necessary to produce a credible estimate of the probable selling or leasing price. Adjustments shall be considered for differences in property characteristics such as location, age, size, design, physical features, amenities, utility, condition, economic or functional obsolescence and conditions of sale. The amounts of adjustments shall reflect the values that the local real estate market places on the differences in the characteristics in question.

(g) A broker price opinion or comparative market analysis provided to the party for whom the opinion or analysis is being performed shall address, in addition to matters required to be addressed by G.S. 93A-83 and other provisions of this Rule, the following items:

- (1) a description of the comparable properties used in the analysis (including any unsold properties listed for sale or rent that were used as comparable properties);
- (2) the adjustments made to the selling or leasing prices of comparable properties;
- (3) local real estate market conditions;
- (4) if the date on which the sale or lease of a comparable property became final is more than six months prior to the effective date of the broker price opinion or comparative market analysis, an explanation of why the comparable property was used in the analysis and a description of the market conditions affecting the comparable property at the time the sale or lease became final; and
- (5) each method used in deriving the estimate of probable selling or leasing price.

(h) In connection with a broker price opinion or comparative market analysis, an estimated probable leasing price may be reported by a broker as a lease rate and an estimated probable selling or leasing price may be reported by a broker either as a single figure or as a price range. When the estimated probable selling or leasing price is stated as a price range and the higher figure exceeds the lower figure by more than 10 percent, the broker shall include an explanation of why the higher figure exceeds the lower figure by more than 10 percent.

## Subchapter 58B Timeshares

### SECTION .0100 TIMESHARE PROGRAM REGISTRATION

#### B .0101 Application for Registration

(a) A timeshare program seeking registration shall apply to the Commission on a form available on the Commission's website and shall, in addition to the requirements set forth in G.S. 93A-52, set forth:

- (1) the timeshare program's physical and mailing address and telephone number;
- (2) the developer's name, address, telephone number, email address, type of business structure with supporting documentation, and legal counsel's contact information, if any;
- (3) information concerning the developer's title or right to use the real property on which the project is located, including a title opinion provided by an independent attorney performed within 30 days preceding the date of application;
- (4) a description of the timeshare estate to be sold or conveyed to purchasers;
- (5) the developer's past real estate development experience and any criminal, bankruptcy, and occupational licensing history;
- (6) the developer's financial information including the following:
  - (A) an audited financial statement within the previous six months;
  - (B) loan commitments for completion of the timeshare program; and
  - (C) a projected budget for construction, marketing, and operations of the timeshare program;
- (7) the Registrar, Program Broker, marketing entity, and managing entity's:
  - (A) name;
  - (B) business and email address;
  - (C) real estate license number, if applicable;
  - (D) telephone number; and
  - (E) executed Affidavit of Designation, if applicable, that includes:
    - (i) the timeshare program name, registration number, and address;
    - (ii) the name of the designated individual and license number, if applicable, or financial institute;
    - (iii) the designated individual's address, email address, and telephone number; and
    - (iv) a notarized signature of the designated individual.

- (8) the names and real estate license number of brokers associated with the timeshare program; and
- (9) a signed affidavit by the developer.

(b) An entity that owns time shares at a timeshare program where there are one or more existing registered developers may also apply to the Commission for registration of its timeshares, provided that the entity does not control a registered developer, is not controlled by a registered developer, and is not in common control of the program with a registered developer.

#### B .0102 Registration Fee

The timeshare program registration fee pursuant to Rule .0101 of this Subchapter shall be:

- (1) one thousand dollars (\$1,000) for programs with 16 or more units;
- (2) seven hundred dollars (\$700.00) for programs with 15 or fewer units; and
- (3) four hundred fifty dollars (\$450.00) for programs offering to resell 51 or more units through a homeowner association which has acquired the units in satisfaction of unpaid assessments by prior owners.

#### B .0103 Renewal of Timeshare Program Registration

(a) A developer seeking renewal of a timeshare program registration shall submit a renewal application on a form available on the Commission's website that sets forth the:

- (1) timeshare program's name, registration number, and mailing address;
- (2) developer's name, telephone number, and email address;
- (3) names and license numbers of brokers associated with the timeshare program;
- (4) exchange programs associated with the timeshare program along with a current copy of the Exchange Disclosure Report pursuant to G.S. 93A-48;
- (5) name, address, email address, telephone number, real estate broker license number if applicable, and the assignment date for the:
  - (A) managing entity;
  - (B) marketing entity;
  - (C) registrar pursuant to G.S. 93A-58(a);
  - (D) independent escrow agent pursuant to G.S. 93A-42(a); and
  - (E) program broker pursuant to 93A-58(c);
- (6) certification that the information contained in the renewal registration is accurate and current on the date of the renewal application; and
- (7) developer's attorney or program broker's signature.

(b) The developer shall submit a renewal registration fee of eight hundred dollars (\$800.00) for timeshare programs not offered for resale by a homeowners association. A homeowners association shall submit a renewal registration fee of four hundred fifty dollars (\$450.00).

(c) Making a false certification on a time share project registration renewal application shall be grounds for disciplinary action by the Commission pursuant to G.S. 93A-54(b)(13).

#### **B .0104 Amendments to Timeshare Program Registration**

(a) A developer shall notify the Commission within 30 days after any material change in the information contained in the timeshare program registration.

(b) A material change shall be any change which reflects a difference in the:

- (1) nature, quality, or availability of the purchaser's ownership or right to use the timeshare;
- (2) nature, quality, or availability of any amenity at the project;
- (3) developer's title, control, or right to use the real property on which the project is located;
- (4) information concerning the developer, managing or marketing entities, independent escrow agent, registrar, or program broker, previously filed with the Commission; or
- (5) purchaser's right to exchange his or her unit; however, a change in the information required to be disclosed to a purchaser by G.S. 93A-48 shall not be a material change.

(c) A timeshare developer seeking to amend a program's registration shall submit each document to be amended with new or changed information underlined in red. Every amendment submitted shall be accompanied by a cover letter signed by the developer or the developer's attorney containing a summary of the amendment and a statement of reasons for which the amendment has been made. The cover letter shall also state:

- (1) the name and address of the timeshare program and registration number;
- (2) the name and address of the developer;
- (3) the document or documents to which the amendment applies;
- (4) whether or not the changes represented by the amendment required the assent of the timeshare owners and, if so, how the assent of the timeshare owners was obtained; and
- (5) the recording reference in the office of the registrar of deeds for the changes, if applicable.

(d) If the ownership of a developer of a registered timeshare program changes, the new developer shall file a new timeshare program registration application pursuant to Rule .0101 of this Subchapter. Said refiling shall be without a fee.

#### **B .0105 Notice of Termination**

A developer seeking to terminate its interest in a timeshare program shall file a Notice of Termination form available on the Commission's website and shall set forth the timeshare program's:

- (1) name;
- (2) physical, mailing, and email address;
- (3) telephone number;
- (4) reason the developer is terminating its interest;
- (5) date of termination;
- (6) new owner, if the developer's interest will be sold or transferred; and
- (7) the signature of the developer.

### **SECTION .0200 PUBLIC OFFERING STATEMENT**

#### **B .0201 General Provisions**

(a) Information contained in a public offering statement pursuant to G.S. 93A-44(b) shall be accurate on the day it is supplied to a purchaser.

(b) The inclusion of false or misleading statements in a public offering statement shall be grounds for disciplinary action by the Commission.

#### **B .0202 Public Offering Statement Summary**

In addition to the requirements in G.S. 93A-44, a public offering statement shall contain a page prescribed by the Commission and completed by the developer entitled Public Offering Statement Summary in conspicuous type. The Public Offering Statement Summary shall read as follows:

#### **PUBLIC OFFERING STATEMENT SUMMARY**

##### **NAME OF PROJECT:**

##### **NAME AND REAL ESTATE LICENSE NUMBER OF BROKER (IF ANY):**

Please study this Public Offering Statement carefully. Satisfy yourself that any questions you may have are answered before you decide to purchase. If a salesperson or other representative of the developer has made a representation which concerns you, and you cannot find that representation in writing, ask that it be pointed out to you.

#### **NOTICE**

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**UNDER NORTH CAROLINA LAW, YOU MAY  
CANCEL YOUR TIMESHARE PURCHASE WITH-  
OUT PENALTY WITHIN FIVE DAYS AFTER SIGN-  
ING YOUR CONTRACT. TO CANCEL YOUR TIME-  
SHARE PURCHASE, YOU MUST MAIL OR HAND  
DELIVER WRITTEN NOTICE OF YOUR DESIRE  
TO CANCEL YOUR PURCHASE TO (name and ad-**

**dress of project). IF YOU CHOOSE TO MAIL YOUR CANCELLATION NOTICE, THE NORTH CAROLINA REAL ESTATE COMMISSION RECOMMENDS THAT YOU USE REGISTERED OR CERTIFIED MAIL AND THAT YOU RETAIN YOUR POSTAL RECEIPT AS PROOF OF THE DATE YOUR NOTICE WAS MAILED. UPON CANCELLATION, ALL PAYMENTS WILL BE REFUNDED TO YOU.**

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#### **B .0203 Receipt for Public Offering Statement**

(a) Prior to the execution of any contract to purchase a timeshare, a developer or a timeshare salesperson shall obtain from the purchaser a written receipt for the public offering statement, which shall display, directly over the buyer signature line in type in all capital letters, no smaller than the largest type on the page on which it appears, the following statement: DO NOT SIGN THIS RECEIPT UNLESS YOU HAVE RECEIVED A COMPLETE COPY OF THE PUBLIC OFFERING STATEMENT.

(b) Receipts for public offering statements shall be maintained as part of the records of the sales transaction.

### **SECTION .0300 CANCELLATION**

#### **B .0301 Proof of Cancellation**

(a) The postmark date affixed to any written notice of a purchaser's intent to cancel a timeshare purchase shall be presumed by the Commission to be the date the notice was mailed to the developer. Evidence tending to rebut this presumption shall be admissible at a hearing before the Commission.

(b) Upon receipt of a purchaser's written notice of intent to cancel a timeshare purchase, the developer, or the developer's agent or representative, shall retain the notice and any enclosure, envelope, or other cover in the developer's files, and shall produce the file upon the Commission's request.

(c) When there is more than one developer at a timeshare program and a purchaser gives written notice of intent to cancel a timeshare purchase that is received by a developer or sales staff other than the one from whom the timeshare was purchased, the developer or sales staff receiving such notice shall promptly deliver it to the proper developer who shall then honor the notice if it was timely sent by the purchaser.

### **SECTION .0400 TIMESHARE SALES OPERATIONS**

#### **B .0401 Retention of Timeshare Records**

(a) A developer shall maintain or cause to be main-

tained complete timeshare records for a period of not less than three years after the completion or termination of a timeshare sale, rental, or exchange.

(b) Timeshare records shall include, at a minimum, copies of the following:

- (1) offers to purchase;
- (2) applications and contracts to purchase;
- (3) rent or exchange timeshares;
- (4) records of deposits;
- (5) maintenance and disbursement of funds required to be held in trust;
- (6) receipts;
- (7) notices of cancellations;
- (8) compensation of timeshare salespersons;
- (9) public offering statement and summary; and
- (10) any other records pertaining to the timeshare transaction or termination.

(c) Timeshare records shall be made available for inspection and reproduction to the Commission or its authorized representatives without prior notice.

#### **B .0402 Timeshare Agency Agreements and Disclosure**

Timeshare sales transactions conducted by brokers on behalf of a developer are subject to 21 NCAC 58A .0104.

### **SECTION .0500 HANDLING AND ACCOUNTING OF FUNDS**

#### **B .0501 Timeshare Trust Funds**

(a) Except as otherwise permitted by G.S. 93A-45(d), all monies received by a developer or a timeshare salesperson in connection with a timeshare sales transaction shall be deposited into a trust or escrow account immediately following receipt and shall remain in such account for ten days from the date of sale or cancellation by the purchaser, whichever first occurs.

(b) All monies received in connection with a timeshare transaction shall be delivered immediately to the program broker.

### **SECTION .0600 PROGRAM BROKER**

#### **B .0601 Designation of Program Broker**

(a) The developer shall designate a program broker for each registered timeshare program. The developer shall file with the Commission an Affidavit of Timeshare Program Broker available on the Commission's website and shall set forth the timeshare program's:

- (1) name and registration number;
- (2) program broker's name, business and email address, real estate license number, telephone number,

and notarized signature.

(b) The developer shall file with the Commission a new Affidavit of Timeshare Program Broker within 10 days of any change in the program broker.

(c) Brokers licensed pursuant to 21 NCAC 58A .1800 and provisional brokers as defined in G.S. 93A-4(a1) shall not be designated as a program broker.

#### **B .0602 Duties of the Program Broker**

(a) The program broker shall:

(1) display the timeshare program registration certificate at the project;

(2) ensure that each broker affiliated with the program has complied with Rules .0503 and .0504 of this Subchapter;

(3) notify the Commission of any change in the developer or material change pursuant to Rule .0104(b) of this Subchapter;

(4) deposit and maintain the trust or escrow account of the timeshare program and the records pertaining thereto;

(5) retain and maintain the timeshare program's records pursuant to Rule .0401 of this Subchapter.

(b) The program broker shall review all contracts, public offering statements and other documents distributed to the timeshare program's purchasers to ensure that the documents comport with the requirements of the Article 4 of Chapter 93 of the North Carolina Statutes and the rules adopted by the Commission, and to ensure that true and accurate documents have been given to the purchasers.

(c) The program broker shall notify the Commission in writing of any change in his or her status as program broker within 10 days.



## Subchapter 58G

### North Carolina Real Estate Commission

#### SECTION .0100 – GENERAL

##### **G .0101 Per Diem**

A member of the Real Estate Commission shall receive a per diem payment of two hundred dollars (\$200.00) for each day during which the member is engaged in business for or on behalf of the Real Estate Commission.

##### **G .0102 Location**

(a) The office of the North Carolina Real Estate Commission is located at 1313 Navaho Drive, Raleigh, North Carolina. The mailing address is Post Office Box 17100, Raleigh, North Carolina 27619-7100.

(b) Forms and information about the office may be obtained from the Commission's website at [www.ncrec.gov](http://www.ncrec.gov).

##### **G .0103 Definitions**

The following definitions apply throughout this Chapter and to all forms prescribed pursuant to this Chapter:

- (1) "Branch Office" means any office in addition to the principal office of a broker that is operated in connection with the broker's real estate business.
- (2) "BIC" means a broker-in-charge pursuant to G.S. 93A-2(a1).
- (3) "BIC Eligible" means a broker's license status who has satisfied the broker-in-charge qualification requirements and filed application pursuant to G.S. 93A-4.2 and 21 NCAC 58A .0110.
- (4) "Commission" means the North Carolina Real Estate Commission.
- (5) "Commission's website" means [www.ncrec.gov](http://www.ncrec.gov).
- (6) "Day" means calendar day unless the rule expressly states otherwise. The first day counted is the day following the act, event, or transaction that triggered the tolling of the designated time period.
- (7) "Fee" means a payment made to the Commission by a bank check, certified check, money order, debit card, credit card, or other electronic means and is nonrefundable once the payment has been processed.
- (8) "Firm" means a partnership, corporation, limited liability company, association, or other business entity, except for a sole proprietorship.
- (9) "Form" means an original form template provided by the Commission and completed by the submitting party.
- (10) "Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a broker acting in a fiduciary capacity are handled or records for such trust monies are maintained.

(11) "Principal Office" means the office so designated in the Commission's records by the qualifying broker of a licensed firm or the broker-in-charge of a sole proprietorship.

##### **G .0104 Limited Education Requirements for Public Health Emergency [Expired Rule]**

##### **G .0105 Limited Instructor Education Requirements for Public Health Emergency [Expired Rule]**

## Subchapter 58H Real Estate Education

### SECTION .0100 GENERAL

#### H .0101 Definitions

The following definitions apply throughout this Subchapter and to all forms prescribed pursuant to this Chapter:

- (1) “Assessment” means a quiz or evaluation that tests a student’s mastery of the learning objective.
- (2) “Blended learning” means any combination of distance education, synchronous distance learning, and in-person methods of instruction.
- (3) “Branch location” means any location in addition to the principal address of an education provider that offers Prelicensing or Postlicensing Courses.
- (4) “Continuing education” means a continuing education elective or Update Course.
- (5) “Distance education” means a method of instruction accomplished through the use of media whereby teacher and student are separated by distance and time.
- (6) “End-of-course examination” means an examination administered at the conclusion of a course that tests students’ knowledge and mastery of all course subjects mandated by the Commission prescribed course syllabus.
- (7) “Instructional hour” means 50 minutes of instruction and 10 minutes of break time.
- (8) “Instructor development program” means courses of instruction designed to assist real estate instructors in the performance of Prelicensing, Postlicensing, or continuing education instructor duties or in the development of teaching skills.
- (9) “Learning objective” means a statement of what a student will be able to do after completing a unit or course. A learning objective shall be structured in accordance with Bloom’s Taxonomy.
- (10) “License Examination Performance Record” means the percentage of an instructor’s or education provider’s students who, within 30 days of completing a Prelicensing course pursuant to 21 NCAC 58H .0207(a), take and pass the license examination, as defined in 21 NCAC 58A .0402, on their first attempt.
- (11) “Postlicensing course” means any one of the courses comprising the 90 hour Postlicensing education program pursuant to G.S. 93A-4(a1) and 21 NCAC 58A .1902.
- (12) “Prelicensing course” means a single course consisting of at least 75 hours of instruction on subjects prescribed by the Commission pursuant to

G.S. 93A-4(a).

(13) “Public education provider” means any proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 or approved by the Board of Governors of the University of North Carolina that conducts approved real estate courses.

(14) “Syllabus” means a document that includes each topic and subtopic addressed during the course and for each topic and subtopic describes the scope and depth of coverage, timing, and references to course materials, and also demonstrates opportunities for student interactions throughout the course, such as discussion boards, chat areas, group activities, and quizzes.

(15) “Synchronous distance learning” means the instructor and students are separated only by distance and not time, allowing for real-time monitoring of student participation.

(16) “Update Courses” means the General Update Course and the Broker-in-Charge Update Course.

(17) “Unit” means a segment of distance education that is based upon a topic or subtopic in the course syllabus that lasts no longer than one hour.

### SECTION .0200 REAL ESTATE EDUCATION PROVIDERS

#### H .0201 Applicability

This Section applies to all real estate education providers offering approved real estate courses. Public education providers shall be exempt from the rules in this Section unless the rule specifically requires compliance.

#### H .0202 Application for Education Provider Certification

(a) Any community college, junior college, or university located in this State and accredited by the Southern Association of Colleges and Schools seeking education provider certification shall apply to the Commission on a form available on the Commission’s website and shall set forth the:

- (1) education provider’s name;
- (2) education director’s name and contact information;
- (3) education director’s email address;
- (4) education provider’s address;
- (5) education provider’s telephone number;
- (6) education provider’s website address;
- (7) type of public institution;
- (8) Prelicensing, Postlicensing, and Continuing Ed-

ucation courses to be offered by the applicant; and  
(9) a signed certification by the education director that courses shall be conducted in compliance with the rules of this Subchapter.

(b) Any other person or entity seeking education provider certification shall apply to the Commission on a form available on the Commission's website and shall set forth the following criteria in addition to the requirements in G.S. 93A-34(b1):

- (1) the website, physical and mailing address, and telephone number of the principal office of the education provider;
- (2) the education director's license number, if applicable, email and mailing address, and telephone number;
- (3) the North Carolina Secretary of State Identification Number, if applicable;
- (4) the physical address of each proposed branch location, if applicable;
- (5) the type of ownership entity;
- (6) a signed Consent to Service of Process and Pleadings form available on the Commission's website, if a foreign entity;
- (7) the Prelicensing, Postlicensing, and Continuing Education courses to be offered by the applicant; and
- (8) a signed certification by the education director that courses shall be conducted in compliance with the rules of this Subchapter.

(c) The certification application fee for an education provider applying under Paragraph (b) of this Rule shall be two hundred dollars (\$200.00) for each proposed education provider location. Provided however, education providers shall not be required to obtain a certification for every location a Continuing Education course is offered.

(d) If any education provider relocates any location or opens additional branch locations during any licensing period, the education director shall submit an original application for certification of that location pursuant to this Rule.

(e) In the event that any education provider advertises or operates in any manner using a name different from the name under which the education provider is certified, the education provider shall first file an assumed name certificate in compliance with G.S. 66-71.4 and shall notify the Commission in writing of the use of such an assumed name. An education provider shall not advertise or operate in any manner that would mislead a consumer as to the education provider's actual identity.

#### **H .0203 Education Director**

(a) All education providers shall designate an education director, who shall:

- (1) supervise all education provider operations related to the conduct of offering Prelicensing, Postlicensing, and Continuing Education courses;

- (2) ensure that each approved instructor meets the requirements of Rule .0302 of this Subchapter;
- (3) ensure that each continuing education elective course instructor meets the requirements of Rule .0402(a)(5) of this Subchapter;
- (4) ensure each course utilizes course materials pursuant to Rule .0205 of this Section;
- (5) sign course completion certificates;
- (6) submit to the Commission all required fees, rosters, reports, and other information;
- (7) submit to the Commission the name and the instructor number of each course instructor within 10 days of employment;
- (8) ensure compliance with all statutory and rule requirements governing the certification and operation of the education provider;
- (9) take steps to protect the security and integrity of course examinations at all times; and
- (10) act as the education provider's liaison to the Commission.

(b) Public education providers shall designate one permanent employee to serve as the education director.

(c) The education director shall approve a guest lecturer prior to the guest lecturer teaching a course session. Education directors shall ensure that all guest lecturers possess experience related to the particular subject area the guest lecturer is teaching. Guest lecturers may be utilized to teach collectively up to one-fourth of any Prelicensing or Postlicensing course.

(d) The education director shall ensure all instructors that teach Prelicensing or Postlicensing courses by methods other than distance education are observed at least once annually for a minimum of one hour of live uninterrupted instruction by either the education director or a Commission-approved Prelicensing or Postlicensing instructor present in the classroom. Education directors who are also instructors may, upon written request to the Commission, be evaluated by a Commission monitor. The evaluation shall be based on the instructor's teaching abilities pursuant to Rule .0304 of this Subchapter. The instructor shall receive the written evaluation of his or her instructional performance within 30 days of observation.

(e) The education director for any education provider shall view the Commission's Education Director video electronically within 30 days of initial designation and annually within 45 days immediately preceding expiration of education provider certification.

(f) Education providers shall notify the Commission within 10 days of any change in education director during the certification period.

(g) The education director shall admit any Commission authorized representative to monitor any class or provide access to a distance education course without prior notice. Such representatives shall not be required to register or pay any fee and shall not be reported as having completed the

course.

(h) An education director shall dismiss a student from the course who is found to have cheated in any manner on a course examination and shall not award a passing grade or any partial completion of the course. The education director shall report the cheating incident in writing to the Commission within 10 days.

#### **H .0204 Policies and Procedures Disclosure**

(a) An education provider shall publish to prospective students and provide to all students upon enrollment a Policies and Procedures Disclosure.

(b) In addition to the information required by G.S. 93A-34(c)(5), an education provider's Policies and Procedures Disclosure shall include:

(1) the name and address of the Commission, along with a statement that any complaints concerning the education provider or its instructors should be directed to the Commission;

(2) a statement that the education provider shall not discriminate in its admissions policy or practice against any person on the basis of age, sex, race, color, national origin, familial status, handicap status, or religion;

(3) the education provider's most recent annual License Examination Performance Record and the Annual Summary Report data as published by the Commission;

(4) the all-inclusive tuition and fees for each particular course;

(5) a written course cancellation and refund policy;

(6) a list of all course and reference materials required;

(7) the course completion requirements pursuant to Rule .0207 of this Section and 21 NCAC 58A .1705; and

(8) a signed certification acknowledging the student's receipt of the Policies and Procedures Disclosure prior to payment of any portion of tuition or registration fee without the right to a full refund.

(c) In addition to the information required in Paragraph (b) of this Rule and G.S. 93A-34(c)(5), an education provider offering distance education, synchronous distance learning, or blended learning courses shall include:

(1) a list of hardware and software or other equipment necessary to offer and complete the course;

(2) the contact information for technical support; and

(3) a description of how the end-of-course examination shall be administered to the student.

#### **H .0205 Course Materials**

(a) All courses shall have course materials that cover current North Carolina real estate related laws, rules, and practices. The nature and depth of subject matter coverage shall

be consistent with the competency and instructional levels prescribed by the syllabus for the course for which approval is sought.

(b) Postlicensing courses shall utilize the current edition of the North Carolina Real Estate Manual. The North Carolina Real Estate Manual may be purchased on the Commission's website in electronic format for twenty five dollars (\$25.00) per license year and as a print publication for fifty dollars (\$50.00).

(c) Education providers shall verify each student has the course materials no later than the first class session.

#### **H .0206 Advertising and Recruitment Activities**

(a) Any education provider utilizing its License Examination Performance Record or Annual Summary Report for advertising or promotional purposes shall only use the most recent annual License Examination Performance Record or Annual Summary Report as published on the Commission's website in a manner that is not misleading or false.

(b) Education providers shall not make or publish, by way of advertising or otherwise, any false or misleading statement regarding employment opportunities that may be available as a result of completion of a course offered by that education provider or acquisition of a real estate license.

(c) Education providers shall not use endorsements or recommendations of any person or organization for advertising or otherwise unless such person or organization has consented in writing to the use of the endorsement or recommendation. In no case shall any person or organization be compensated for an endorsement or recommendation.

(d) Education providers shall not offer Postlicensing courses only for brokers affiliated with a particular real estate broker, firm, franchise, or association.

(e) Education providers may offer and advertise courses in addition to those approved by the Commission pursuant to this Subchapter provided that references to such courses are not made or published in a manner that implies approval by the Commission.

(f) Instructional time and materials shall be utilized for instructional purposes only.

(g) All Continuing Education course advertisements and promotional materials shall specify the number of Continuing Education credit hours to be awarded by the Commission for the course.

(h) The education provider name shall be used in all publications and advertising.

#### **H .0207 Course Completion Certificates and Reports**

(a) For each Prelicensing course taught, an education provider shall provide a course completion certificate within 180 days of enrollment that is signed by the education director to each student that:

(1) in synchronous distance learning and in-person courses attend at least 80 percent of all scheduled instructional hours or in distance education completes

all units and assessments; and

(2) obtains a grade of at least a 75 percent on the end-of-course examination.

(b) For each Postlicensing course taught, an education provider shall provide a course completion certificate within 180 days of enrollment that is signed by the education director to each student that:

(1) in synchronous distance learning and in-person courses attend at least 90 percent of all scheduled instructional hours or in distance education completes all units and assessments; and

(2) obtains a grade of at least a 75 percent on the end-of-course examination.

(c) The end-of-course examination shall be proctored and students shall not use textbooks or other materials on the end-of-course examination. End-of-course examinations administered in a distance education, blended learning, or synchronous distance learning course shall include proctoring or other security measures designed to verify the identity of the student taking the examination and ensure that students are not using textbooks or other materials on the end-of-course examination.

(d) For each continuing education course taught, an education provider shall provide a course completion certificate signed by the education director to each student that meets the requirements of 21 NCAC 58A .1705.

(e) The course completion certificate shall identify the course, date of completion, student, and instructor.

(f) An education director shall submit a Course Completion Report within seven calendar days of any student completing any real estate course pursuant to the education provider's Policies and Procedures Disclosure. The Course Completion Report shall include:

- (1) each student's legal name;
- (2) each student's email address and telephone number;
- (3) each student's unique identification number, if reporting a Prelicensing course;
- (4) each student's real estate broker license number, if applicable;
- (5) the course completion date;
- (6) the education provider's name and number;
- (7) the course number; and
- (8) the instructor's name and number.

(g) For each Prelicensing or Postlicensing course taught, an education director shall submit a Summary Report no later than the fifth day of the month. The Summary Report shall contain the previous month's data. The Summary Report shall include the:

- (1) name of the instructor(s);
- (2) title of course(s);
- (3) number of students who paid tuition in each course and did not receive a refund;
- (4) number of students who met all course requirements pursuant to Paragraph (a) and (b) of this

Rule; and

(5) number of students who satisfied Subparagraphs (a)(1) and (b)(1) of this Rule but did not satisfy Subparagraphs (a)(2) and (b)(2) of this Rule.

(h) Education providers shall electronically submit the per student fee prescribed by G.S. 93A-4(a2) and G.S. 93A-38.5(d). No fee shall be required for public education providers or an agency of federal, state, or local government.

#### **H .0208 Education Provider Records**

All education provider records shall be retained for three years by the education provider and be made available to the Commission during an investigation or application process. Education provider records shall include:

- (1) enrollment and attendance records;
- (2) each student's end-of-course examination with grade and graded answer sheet;
- (3) a master copy of each end-of-course examination with its answer key, course title, course dates and name of instructor;
- (4) all instructor evaluations pursuant to Rule .0203(d) of this Section;
- (5) advertisements;
- (6) ARELLO or IDECC certifications;
- (7) bulletins, catalogues, Policies and Procedures Disclosure, and other official publications;
- (8) course schedules;
- (9) student course materials;
- (10) signed certifications pursuant to Rule .0204(b) of this Section; and
- (11) statements of consent pursuant to Rule .0206(c) of this Section.

#### **H .0209 Expiration and Renewal of Education Provider Certification**

(a) All education provider and public education provider certifications shall expire annually on June 30 following certification.

(b) An education provider or public education provider seeking renewal of its certification shall submit an electronic application which shall include the following information:

- (1) the education provider or public education provider's:
  - (A) name;
  - (B) number;
  - (C) mailing address;
  - (D) telephone number; and
  - (E) website address, if applicable; and
- (2) the education director's name and signature;
- (3) all approved real estate courses offered;
- (4) a copy of the education provider's Policies and Procedures Disclosure, if applicable;
- (5) proof of bond as required in G.S. 93A-36, if applicable; and
- (6) a certification that the course meets the require-

ments of Subchapter 58H.

(c) Public education providers shall not be charged any fees to renew the education provider certification or course renewal.

(d) The education provider certification renewal fee shall be one hundred dollars (\$100.00) for each education provider location.

(e) The renewal fee for an education provider to offer a Prelicensing or Postlicensing course at any of its locations during the licensed period shall be twenty-five dollars (\$25.00) per Prelicensing or Postlicensing course.

(f) The renewal fee for an education provider to renew an approved continuing education elective course shall be fifty dollars (\$50.00) per elective course.

(g) The materials fee for an education provider to renew an Update course approval shall be one hundred dollars (\$100.00).

(h) If an education provider or public education provider certification has expired, the education provider shall submit an application for original certification pursuant to Rule .0202 of this Subchapter.

(i) Commission approval of all continuing education courses shall expire on June 30. In order to obtain approval for an expired continuing education course, an education provider shall submit an original application pursuant to Rule .0401 of this Subchapter.

(j) If an education provider transfers an aggregate of 50 percent or more of the ownership interest, the education provider shall notify the Commission in writing within 10 days of the transfer.

(k) On or before July 1, 2021, all education providers shall modify approved courses to comply with this Subchapter.

#### **H .0210 Limitations, Denial, Withdrawal, or Termination of Education Provider Certification**

(a) The Commission may limit, deny, or withdraw certification of an education provider or suspend, revoke, or deny renewal of the certification of an education provider upon finding that an education provider:

(1) was found by a court or government agency of competent jurisdiction to have violated any state or federal law;

(2) made any false statements or presented any false, incomplete, or incorrect information in connection with an application;

(3) failed to provide or provided false, incomplete, or incorrect information in connection with any report the education provider is required to submit to the Commission;

(4) presented to its students or prospective students false or misleading information relating to its instructional program, to the instructional programs of other institutions, or related to employment opportunities;

(5) collected money from students but refused or failed to provide the promised instruction;

(6) failed to submit the per student fee as required by G.S. 93A-4(a2) or 93A-38.5(e).

(7) refused at any time to permit authorized representatives of the Commission to inspect the education provider's facilities or audit its courses;

(8) or education director violated the rules of this Subchapter or was disciplined by the Commission under G.S. 93A-6;

(9) obtained or used, or attempted to obtain or use, in any manner or form, North Carolina real estate license examination questions;

(10) failed to provide to the Commission, within 30 days of the Commission's request during an investigation or application process, a written plan describing the changes the education provider made or intends to make in its instructional program including instructors, course materials, methods of student evaluation, and completion standards to improve the performance of the education provider's students on the license examination;

(11) provided the Commission a fee that was dishonored by a bank or returned for insufficient funds;

(12) has had its Certificate of Authority revoked by the NC Secretary of State pursuant to G.S. 55-15-30;

(13) has been subject to a revenue suspension or suspended by the NC Secretary of State pursuant to G.S. 105-230;

(14) has been administratively dissolved by the NC Secretary of State pursuant to G.S. 57D-6-06;

(15) failed to utilize course materials pursuant to Rule .0205 of this Section;

(16) failed to submit reports pursuant to Rule .0207 of this Section;

(17) provided false, incomplete, or misleading information relating to real estate licensing, education matters, or the broker's education needs or license status;

(18) discriminated in its admissions policy or practice against any person on the basis of age, sex, race, color, national origin, familial status, handicap status, or religion; or

(19) refused or failed to comply with the provisions of this Subchapter.

(b) A broker shall be subject to discipline pursuant to G.S. 93A-6 if the broker engages in dishonest, fraudulent, or improper conduct in connection with the operations of an education provider if that broker:

(1) has an ownership interest in the education provider;

(2) is the education director; or

(3) is an instructor for an education provider.

(c) If an education provider's annual License Examina-

tion Performance Record fails to exceed 40 percent in each of the previous two license years and the education provider was certified by the Commission during the entire two years, the Commission shall limit the education provider's certification such that the education provider shall not offer prelicensing or postlicensing courses. Said limitation shall be effective July 1st of the calendar year following the Commission's determination.

The education provider shall be eligible to have the limitation removed one year after the limitation is imposed provided that the education provider has:

- (1) provided a written plan describing the changes the education provider has made or intends to make in its instructional program to improve the performance of the students on the license examination;
- (2) consulted with a designated Commission staff member to review the written plan and needs for improvement; and
- (3) employed an instructor with no limitations to teach prelicensing and postlicensing courses.

(d) A limited education provider is eligible to renew its certification; however, a renewal shall not remove the limitations provided under Paragraph (c) of this Rule.

(e) When ownership of a certified education provider is transferred and the education provider ceases to operate as the certified entity, the certification is not transferable and shall terminate on the effective date of the transfer. All courses shall be completed by the effective date of the transfer. The transferring owner shall report course completion(s) to the Commission. The new entity shall obtain an original certification for each location where the education provider will conduct courses as required by G.S. 93A-34 and Rule .0202 of this Section prior to advertising courses, registering students, accepting tuition, conducting courses, or otherwise engaging in any education provider operations.

## **SECTION .0300 APPROVED INSTRUCTORS**

### **H .0301 Prelicensing, Postlicensing, and Update Course Instructor Approval**

(a) Approval of an instructor to teach Prelicensing and Postlicensing courses shall authorize the instructor to teach courses only in conjunction with and at certified education providers pursuant to Rule .0202 of this Subchapter.

(b) An instructor approved to teach Prelicensing and Postlicensing courses may elect to also teach Update courses upon initial approval, renewal, or any time while holding such approval.

(c) Approved instructors may teach Update courses for any certified education provider pursuant to Rule .0202 of this Subchapter. An approved instructor may not independently conduct an Update course unless the instructor has also obtained certification as an education provider.

### **H .0302 Application and Criteria for Instructor Approval**

(a) An individual seeking original instructor approval shall submit an application on a form available on the Commission's website that shall require the instructor applicant to indicate the course(s) for which he or she is seeking approval and set forth the instructor applicant's:

- (1) legal name, address, email address, and telephone number;
- (2) real estate license number and instructor number, if any, assigned by Commission;
- (3) criminal and occupational licensing history, including any disciplinary actions;
- (4) education background, including specific real estate education;
- (5) experience in the real estate business;
- (6) real estate teaching experience, if any;
- (7) a signed Consent to Service of Process and Pleadings for nonresident applicants; and
- (8) signature.

(b) An instructor applicant shall demonstrate that he or she possesses good reputation and character pursuant to G.S. 93A-34(c)(9) and has:

- (1) a North Carolina real estate broker license that is not on provisional status;
- (2) completed continuing education sufficient to activate a license under 21 NCAC 58A .1703;
- (3) completed 60 semester hours of college-level education at an institution accredited by any college accrediting body recognized by the U.S. Department of Education;
- (4) completed the New Instructor Seminar within the previous six months; and
- (5) within the previous seven years has either:
  - (A) two years full-time experience in real estate brokerage with at least one year in North Carolina;
  - (B) three years of instructor experience at a secondary or post-secondary level;
  - (C) real estate Prelicensing or Postlicensing instructor approval in another jurisdiction; or
  - (D) qualifications found to be equivalent by the Commission, including a current North Carolina law license and three years' full time experience in commercial or residential real estate transactions or representation of real estate brokers or firms.

(c) In order to complete the New Instructor Seminar, a broker shall:

- (1) attend at least ninety percent of all scheduled hours; and
- (2) demonstrate the ability to teach a 15-minute block of a single Prelicensing topic in a manner consistent with the course materials.

(d) Prior to teaching any Update course, an approved instructor shall take the Commission's annual Update Instruc-

tor Seminar for the current license period. The Update Instructor Seminar shall not be used to meet the requirement in Rule .0306(b)(4) of this Section.

#### **H .0303 Limitation, Denial or Withdrawal of Instructor Approval**

(a) The Commission may limit, deny, or withdraw approval of any instructor applicant or approved instructor upon finding that the instructor or instructor applicant:

- (1) has failed to meet the criteria for approval described in Rule .0302 of this Section or the criteria for renewal of approval described in Rule .0306 of this Section at the time of application or at any time during an approval period;
- (2) made any false statements or presented any false, incomplete, or incorrect information in connection with an application for approval or renewal of approval or any report that is required to be submitted to the Commission;
- (3) has failed to submit to the Commission any report, course examination, or video recording required by these Rules;
- (4) has failed to demonstrate the ability to teach a Prelicensing, Postlicensing, or Update course in a manner consistent with the course materials;
- (5) taught a Prelicensing course and failed to provide to the Commission, within 30 days of the Commission's request during an investigation or application process, a written plan describing the changes the instructor has made or intends to make in his or her instructional program to improve the performance of the instructor's students on the license examination;
- (6) has been convicted of, pleaded guilty to, or pleaded no contest to, a misdemeanor or felony violation of state or federal law by a court of competent jurisdiction;
- (7) has been found by a court or government agency of competent jurisdiction to have violated any state or federal regulation prohibiting discrimination;
- (8) has obtained, used, or attempted to obtain or use, in any manner or form, North Carolina real estate license examination questions except that the instructor or instructor applicant may sit for their own initial examination for licensure;
- (9) has failed to take steps to protect the security of end-of-course examinations;
- (10) failed to take any corrective action set out in the plan described in Subparagraph (a)(5) of this Rule or as otherwise requested by the Commission;
- (11) engaged in any other improper, fraudulent, or dishonest conduct;
- (12) failed to utilize course materials pursuant to Rule .0205 of this Subchapter;
- (13) has taught or conducted a course in any man-

ner that discriminated against any person on the basis of age, sex, race, color, national origin, familial status, handicap status, or religion; or

(14) failed to comply with any other provisions of this Subchapter.

(b) If an instructor's annual License Examination Performance Record fails to exceed 40 percent in each of the previous two license years and the instructor was approved by the Commission during the entire previous two years, the Commission shall limit the instructor's approval such that the instructor shall not teach prelicensing or postlicensing courses. Said limitation shall be effective July 1st of the calendar year following the Commission's determination.

The instructor shall be eligible to have the limitation removed one year after the limitation is imposed provided that the instructor has:

- (1) provided a written plan describing the changes the instructor has made or intends to make in his or her instructional program to improve the performance of the students on the license examination;
- (2) consulted with a designated Commission staff member to review the written plan and needs for improvement; and
- (3) attended the Commission's New Instructor Seminar.

(c) A limited instructor is eligible to renew an instructor approval; however, a renewal shall not remove the limitations provided under Paragraph (b) of this Rule.

#### **H .0304 Instructor Conduct and Performance**

(a) All instructors shall ensure that class sessions are conducted at the scheduled time and for the full amount of time that is scheduled or required. Instructors shall conduct courses in accordance with the Commission's rules, and any applicable course syllabi, instructor guide, or course plan. Instructors shall conduct classes demonstrating the ability to:

- (1) state student learning objectives at the beginning of the course and present accurate and relevant information;
- (2) communicate correct grammar and vocabulary;
- (3) utilize a variety of instructional techniques that require students to analyze and apply course content, including teacher-centered approaches, such as lecture and demonstration, and student-centered approaches, such as lecture discussion, reading, group problem solving, case studies, and scenarios;
- (4) utilize instructional aids, such as:
  - (A) whiteboards;
  - (B) sample forms and contracts;
  - (C) pictures;
  - (D) charts; and
  - (E) videos.
- (5) utilize assessment tools, such as:
  - (A) in-class or homework assignments, and

- (B) quizzes and midterm examinations for Prelicensing and Postlicensing courses.
- (6) avoid criticism of any other person, agency, or organization;
- (7) identify key concepts and correct student misconceptions; and
- (8) maintain control of the class.

(b) Instructors shall not obtain, use, or attempt to obtain or use, in any manner or form, North Carolina real estate license examination questions.

#### **H .0305 Digital Video Recordings**

(a) Upon request of the Commission during an investigation, an education provider or approved instructor shall submit a digital video recording depicting an instructor teaching a specified course topic.

(b) Any digital video recording submitted to the Commission shall:

- (1) have been made within 12 months of the date of submission;
- (2) be recorded either on a digital video disc (DVD), USB drive, or similar medium;
- (3) be unedited;
- (4) display a visible date and time stamp during the entire video recording;
- (5) include a label identifying the instructor, the course title, subject being taught, and dates of the video instruction;
- (6) include student materials used in the production of the video recording;
- (7) have visual and sound quality to allow reviewers to see and hear the instructor; and
- (8) show at least a portion of the students present in a live audience.

(c) The deadline for any digital video recording requested during an investigation shall be 30 days after the date of the next scheduled course, but no later than 120 days after the Commission's request.

#### **H .0306 Renewal and Expiration of Instructor Approval**

(a) Commission approval of instructors shall expire annually on June 30 following issuance of approval.

(b) Any approved instructor shall file an electronic application for renewal of approval within the 45 days immediately preceding expiration of approval. The instructor renewal application shall set forth the instructor's:

- (1) legal name, address, email address, and telephone number;
- (2) real estate license number and instructor number assigned by Commission;
- (3) any criminal convictions and occupational license disciplinary actions within the past year;
- (4) proof of attendance since approval or last renewal of a real estate instructor educational program of

at least six hours, such as the:

- (A) Commission's Spring Educators Conference or New Instructor Seminar;
  - (B) NC Real Estate Educators Association's conference or instructor development workshop; or
  - (C) Real Estate Educators Association's conference or instructor development workshop.
- (5) courses for which he or she is seeking approval as an instructor; and
- (6) signature.

(c) In order to reinstate an instructor approval that has been expired for less than six months, the former instructor shall meet the requirements set forth in Paragraph (b) of this Rule.

(d) If an instructor approval has been expired for more than six months, the former instructor shall file an application for original approval pursuant to Rule .0302 of this Section.

### **SECTION .0400 REAL ESTATE COURSES**

#### **H .0401 Approval of Real Estate Education Course**

(a) Prior to obtaining the Commission's written approval of a real estate education course, education providers shall not offer, advertise, or otherwise represent that any real estate education course is, or may be, approved for credit in North Carolina.

(b) An education provider seeking original approval of a proposed course shall complete an application on a form available on the Commission's website that requires the applicant to set forth:

- (1) the title of the proposed course;
- (2) the education provider's legal name, address, and telephone number;
- (3) the education director's legal name and signature;
- (4) the education provider's number;
- (5) the credit hours awarded for completing the course;
- (6) the subject matter of the course;
- (7) the identity of the course owner;
- (8) the written permission of the course owner, if other than the applicant;
- (9) the identity of prospective instructors;
- (10) a description of the method by which the education provider will proctor the end-of-course examination for Prelicensing and Postlicensing courses;
- (11) a description of the mechanism used for verification of possession of required course materials; and
- (12) a copy of the course guide, which shall include:
  - (A) course objectives;
  - (B) learning objectives for each topic;

- (C) a course syllabus;
- (D) instructional methods and aids to be employed; and
- (E) all course materials that will be provided to students.

(c) An applicant seeking approval to offer a distance education course shall submit an application for original approval pursuant to Paragraph (b) of this Rule as well as:

- (1) a full copy of the course on the medium to be utilized for instruction;
- (2) a description of the method by which the education provider will verify and record student attendance;
- (3) a list of hardware and software or other equipment necessary to both offer and complete the course;
- (4) the contact information for the technical support service for the course;
- (5) all hardware and software necessary to review the submitted course at the expense of the applicant; and
- (6) an outline demonstrating the course meets the minimum course hours measured by a reading speed of 225 words per minute and the actual duration of audio and video files.

(d) An applicant seeking approval to offer a synchronous distance learning course shall submit an application for original approval pursuant to Paragraph (b) of this Rule as well as:

- (1) a description of the method by which the education provider will verify and record student attendance;
- (2) a list of hardware and software or other equipment necessary to both offer and complete the course; and
- (3) the contact information for the technical support service for the course.

(e) An applicant seeking approval to offer a blended learning course shall submit an application for original approval pursuant to Paragraph (b) of this Rule as well as the additional information pursuant to Paragraphs (c) and (d) of this Rule, as applicable, for each instructional method.

(f) An application pursuant to Paragraph (c) of this Rule shall not be approved by the Commission if:

- (1) the course cannot be reviewed in its entirety; or
- (2) the course does not meet the minimum course hours pursuant to G.S. 93A-4 and 21 NCAC 58A .1702 measured by a reading speed of 225 words per minute and the actual duration of audio and video files.

(g) An education provider seeking approval to offer a currently approved course shall complete an application on a form available on the Commission's website that requires the applicant to set forth the:

- (1) title of the course;

- (2) applicant's legal name, address, and telephone number;
- (3) applicant's education director's legal name;
- (4) applicant's education provider number;
- (5) identity of the course owner;
- (6) written permission of the course owner, if other than the applicant;
- (7) identity of prospective instructors;
- (8) certification that the originally approved course will not be altered;
- (9) a description of the mechanism used for verification of possession of required course materials;
- (10) a description of the method by which the education provider will proctor the end-of-course examination for Prelicensing and Postlicensing courses;
- (11) a description of the method by which the education provider will verify and record student attendance;
- (12) education director's signature; and
- (13) for synchronous distance learning courses:
  - (A) a list of hardware and software or other equipment necessary to both offer and complete the course; and
  - (B) the contact information for the technical support service for the course.

(h) An education provider shall submit a one hundred dollar (\$100.00) fee for each application submitted pursuant to Paragraph (g) of this Rule for any continuing education course. The application shall be deemed approved ten business days after the Commission has received the application and fee, unless the Commission notifies the applicant otherwise.

(i) An education provider shall submit a forty dollar (\$40.00) fee per Prelicensing or Postlicensing course offered at any of its branch locations. No fee shall be required for public education providers or an agency of federal, state, or local government.

(j) An education provider shall submit a one hundred dollar (\$100.00) fee per elective course. No fee shall be required for public education providers or an agency of federal, state, or local government.

#### **H .0402 Continuing Education Elective Course Requirements**

(a) Continuing education elective courses shall:

- (1) cover subject matter related to real estate brokerage practice and offer knowledge or skills that will enable brokers to better serve real estate consumers and the public interest;
- (2) consist of at least four hours of instruction;
- (3) offer four continuing education credit hours;
- (4) include handout materials for students that provide the information to be presented in the course; and
- (5) be taught only by an instructor who possesses at

least one of the following:

- (A) a baccalaureate or higher degree in a field related to the subject matter of the course;
- (B) three years' full-time work experience within the previous 10 years that is related to the subject matter of the course;
- (C) three years' full-time experience within the previous 10 years teaching the subject matter of the course; or
- (D) education or experience or both found by the education director to be equivalent to one of the above standards.

(b) Education providers shall notify the Commission in writing before making any changes in the content of an elective course. However, changes in course content that are technical in nature do not require written notification during the approval period, but shall be reported at the time the education provider requests renewal of course approval.

#### **H .0403 Commission Created Update Courses**

(a) The Commission shall annually develop Update courses and shall produce instructor and student materials for use by education providers.

(b) An education provider shall submit a one hundred dollar (\$100.00) materials fee to offer the Update course.

(c) An education provider seeking approval to offer a modified Update course pursuant to Paragraph (f) of this Rule shall also submit the written permission of each of the course owners, if other than the applicant.

(d) Education providers shall use the Commission-developed course materials to conduct Update courses. Education providers shall provide a copy of the course materials to each broker taking an Update course.

(e) All Update course materials developed by the Commission are the sole property of the Commission and are subject to the protection of copyright laws. Violation of the Commission's copyright with regard to these materials shall be grounds for disciplinary action or other action as permissible by law.

(f) With advance approval from the Commission, education providers and approved instructors may make modifications to the Update course when the Update course is being promoted to and conducted for a group of brokers that specialize in a particular area of real estate brokerage. Such modifications shall relate to the same general subject matter addressed in the prescribed Update course and the Update course as modified shall achieve the same educational objectives as the unmodified Update course. Where certain subject matter addressed in the prescribed Update course is not directly applicable to the group of brokers who specialize in the particular area of real estate brokerage being targeted, different subject matter and education objectives may be substituted with the prior written consent of the Commission. All modified Update course materials shall be the joint property of the Commission and the education provider or

approved instructor approved to make such modifications, or as otherwise determined by written agreement. Violation of the Commission's copyright with regard to these materials shall be grounds for disciplinary action or other action as permitted by law.

(g) The Update Course shall be offered by education providers only as an in-person and synchronous distance-learning course.

#### **H .0404 Course Scheduling**

(a) Continuing Education courses shall be scheduled and conducted in a manner that limits class sessions to a maximum of eight instructional hours in any given day. The maximum permissible class session without a break shall be 90 minutes. Courses scheduled for more than four instructional hours in any given day shall include a meal break of at least one hour.

(b) An education provider shall not offer, conduct, or allow a student to complete any continuing education course between June 11 and June 30, inclusive.

(c) An education provider offering a distance education Continuing Education course shall require students to complete the course within 30 days of the date of registration or the date the student is provided the course materials and permitted to begin work, whichever is the later date.

(d) Education providers shall not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment shall be permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Rule .0207 of this Subchapter.

(e) Education providers shall notify the Commission of all scheduled course offerings no later than 10 days prior to a scheduled course beginning date.

(f) The notice required by Paragraph (e) of this Rule shall include:

- (1) the education provider name;
- (2) the education provider number; and
- (3) for each scheduled course:
  - (A) the name and course number;
  - (B) the scheduled beginning and ending dates, if applicable;
  - (C) the course meeting days and times, including any scheduled lunch breaks; and
  - (D) the name of the instructor and instructor number.

(g) If there is a change or cancellation within five days of the scheduled course date, then the education director shall provide notice to the Commission within 24 hours of the change or cancellation.

#### **H .0415 Distance Education Courses**

(a) At the beginning of a course, distance education courses shall include an orientation that:

- (1) explains the course syllabus;

- (2) identifies all required materials and resources, if any;
- (3) states the maximum time a student is allowed to complete the course; and
- (4) instructs students on how to navigate within the course.

(b) Distance education courses shall include a navigation menu within the course platform that allows students to access the:

- (1) instructor's name and contact information;
- (2) course syllabus and schedule;
- (3) course materials, if any;
- (4) Policies and Procedures Disclosure pursuant to Rule .0204 of this Section; and
- (5) contact information for the course's technical support.

(c) Distance education courses shall be divided into units and students shall complete an assessment for each unit prior to beginning the subsequent unit.





# LICENSE LAW AND RULES COMMENTS

## Comments on Selected Provisions of the North Carolina Real Estate License Law and Real Estate Commission Rules

### INTRODUCTION

These comments on selected North Carolina Real Estate License Law and Real Estate Commission Rules provisions are intended to assist real estate licensees, prelicensing course students and others in understanding the License Law and Commission rules. The comments are organized in a topic format that often differs from the sequence in which the topics are addressed in the License Law and Commission rules. The topics selected for comment here are not only of particular importance in real estate brokerage practice but also are likely to be tested on the real estate license examination. The appropriate references to the License Law and Commission rules are provided beside each listed topic.

### REQUIREMENT FOR A LICENSE

#### General [G.S. 93A-1 and 93A-2]

Any person or business entity who directly or indirectly engages in the business of a real estate broker for compensation or the promise thereof while physically in the state of North Carolina must have a North Carolina real estate broker license. In North Carolina, a real estate licensee may only engage in brokerage as an “agent” for a party to a transaction. Thus, a real estate licensee is commonly and appropriately referred to as a real estate “agent” even though the latter term does not actually appear in the License Law. Note that a real estate “licensee” is NOT automatically a “REALTOR®.” A licensed real estate agent is a REALTOR® **only** if he/she belongs to the National Association of REALTORS®, a private trade association. Thus, the term REALTOR® should not be used to generally refer to all real estate licensees.

#### License Categories [G.S. 93A-2]

There is only one “type” of license, a **broker** license; however, there are several license status categories as described below:

**Provisional Broker** – This is the “entry level” license status category. A person who has met all the license qualification requirements (including a 75-hour prelicensing course and passing the Commission’s license examination) is initially issued a **broker license on “provisional” status** and is referred to as a “**provisional broker**.” A provisional broker generally may perform the same acts as a broker whose license is NOT on provisional status so long as he or she is supervised by a broker who is a designated **broker-in-charge**. A provisional broker may not operate independently in any way. G.S. 93A-2(a2) defines a “**provisional broker**” as “...a real estate broker who, pending acquisition and

*documentation to the Commission of the education or experience prescribed by G.S. 93A-4(a1), must be supervised by a broker-in-charge when performing any act for which a real estate license is required.”*

This license status category is comparable to a “salesperson” license in most other states except that it is a **temporary license status category**. Provisional brokers may not retain this status indefinitely – they must complete required **postlicensing education** to remove the “provisional” status of their licenses and to remain eligible for “active” license status.

**Broker** – A “provisional broker” who satisfies all postlicensing education requirements to terminate the “provisional” status of such license becomes a “**broker**” without having to take another license examination. A broker is NOT required to be supervised by a broker-in-charge in order to hold an “active” license. An applicant who holds a current real estate license in another U.S. jurisdiction that is equivalent to NC’s broker license and that has been on active status within the previous three (3) years may pass the State portion of the license examination and be issued a broker license (assuming requisite character requirements are met). All others must first be licensed in North Carolina as a **provisional broker** and then satisfy the postlicensing education requirement to become a non-provisional broker.

Most frequently, brokers elect to work for another broker or brokerage firm. Brokers may also elect to operate independently as a sole proprietor; however, with limited exceptions, such broker will have to qualify for and designate himself or herself as a **broker-in-charge** in order to operate independently and perform most brokerage activities (discussed further below under “broker-in-charge” and also in a subsequent section on brokers-in-charge that appears near the end of this appendix).

**Broker-In-Charge** – G.S. 93A-2(a1) defines a “**broker-in-charge**” as “...a real estate broker who has been designated as the broker having responsibility for the supervision of real estate provisional brokers engaged in real estate brokerage at a particular real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule.” Commission Rule A.0110 requires that each real estate office must have a broker who meets the qualification requirements to serve as “broker-in-charge” of the office and who has designated himself or herself as the broker-in-charge of that office. As is the case with “provisional broker,” “*broker-in-charge*” is not a separate license, but only a **separate license status category**. A broker who is to serve as the broker-in-charge (BIC) of an office (including working independently) must be designated as a BIC with the Commission.

To qualify for designation as a broker-in-charge, a broker's license must be on "active" status but NOT on "provisional" status, the broker must have **two years full-time or four years part-time brokerage experience within the previous five years** and the broker must complete a 12-hour **Broker-In-Charge Course** no earlier than one year prior or 120 days after designation. Broker-in-charge requirements are addressed in detail in a separate subsequent section titled "Broker-In-Charge."

**Limited Nonresident Commercial Broker** – A broker or salesperson residing in a state other than North Carolina who holds an active broker or salesperson license in the state where his or her primary place of real estate business is located may apply for and obtain a North Carolina "**limited nonresident commercial broker license**" that entitles such licensee to engage in transactions for compensation involving "commercial real estate" in North Carolina. While the non-resident limited broker will remain affiliated with his/her out of state real estate company and will not have a North Carolina broker-in-charge, the non-resident licensee must enter into a "notification of broker affiliation" and a "brokerage cooperation agreement" with a resident North Carolina broker not on provisional status and the licensee must be supervised by the North Carolina broker while performing commercial real estate brokerage in North Carolina. A limited nonresident commercial broker license is a separate license.

**Licensing of Business Entities** [G.S. 93A-1 and 2; Rule A.0502]

In addition to individuals (persons), "business entities" also must be licensed in order to engage in real estate brokerage. Any corporation, partnership, limited liability company, association or other business entity (other than a sole proprietorship) must obtain a separate real estate **firm** broker license.

**Activities Requiring a License** [G.S. 93A-2]

*Persons and business entities who for consideration or the promise thereof perform the activities listed below as an agent for others are considered to be performing brokerage activities and must have a real estate license unless specifically exempted by the statute* (see subsequent section on "Exemptions"). There is no exemption for engaging in a limited number of transactions. A person or entity who performs a brokerage service for compensation in even one transaction must be licensed, whether such compensation is termed a "referral fee," "finder's fee," or other terminology. Similarly, no fee or other consideration is so small as to exempt one from the application of the licensing statute when acting for another in a real estate transaction. *Brokerage activities include:*

1. **Listing (or offering to list) real estate for sale or rent**, including any act performed by a real estate licensee in connection with obtaining and servicing a listing agreement. Examples of such acts include, but are not limited to, soliciting listings, providing information to the property owner, and preparing listing agreements or property management agreements.

2. **Selling or buying (or offering to sell or buy) real estate**, including any act performed by a real estate licensee in connection with assisting others in selling or buying real estate. Examples of such acts include, but are not limited to, advertising listed property for sale, "showing" listed property to prospective buyers, providing information about listed property to prospective buyers (other than basic property facts that might commonly appear in an advertisement in a newspaper, real estate publication or internet website), negotiating a sale or purchase of real estate, and assisting with the completion of contract offers and counteroffers using preprinted forms and communication of offers and acceptances.
3. **Leasing or renting (or offering to lease or rent) real estate**, including any act performed by real estate licensees in connection with assisting others in leasing or renting real estate. Examples of such acts include, but are not limited to, advertising listed property for rent, "showing" listed rental property to prospective tenants, providing information about listed rental property to prospective tenants (other than basic property facts that might commonly appear in an advertisement in a newspaper, real estate publication or internet website), negotiating lease terms, and assisting with the completion of lease offers and counteroffers using preprinted forms and communication of offers and acceptances.
4. **Conducting (or offering to conduct) a real estate auction**. (Mere criers of sale are excluded.) NOTE: An auctioneer's license is also required to auction real estate.
5. **Selling, buying, leasing, assigning or exchanging any interest in real estate, including a leasehold interest, in connection with the sale or purchase of a business**.
6. **Referring a party to a real estate licensee, if done for compensation**. Any arrangement or agreement between a licensee and an unlicensed person that calls for the licensee to compensate the unlicensed person in any way for finding, introducing or referring a party to the licensee has been determined by North Carolina's courts to be prohibited under the License Law. Therefore, *no licensee may pay a finder's fee, referral fee, "bird dog" fee or similar compensation to an unlicensed person*.

#### **Unlicensed Employees — Permitted Activities**

The use of unlicensed assistants and other unlicensed office personnel in the real estate industry is very widespread and the Commission is frequently asked by licensees what acts unlicensed persons may lawfully perform. As guidance to licensees, the Commission has prepared the following list of acts that an unlicensed assistant or employee may lawfully perform so long as the assistant or employee is salaried or hourly paid and is not paid on a per-transaction

basis.

An unlicensed, salaried employee MAY:

1. Receive and forward phone calls and electronic messages to licensees.
2. Submit listings and changes to a multiple listing service, but only if the listing data or changes are compiled and provided by a licensee.
3. Secure copies of public records from public repositories (i.e., register of deeds office, county tax office, etc.).
4. Place “for sale” or “for rent” signs and lock boxes on property at the direction of a licensee.
5. Order and supervise routine and minor repairs to listed property at the direction of a licensee.
6. Act as a courier to deliver or pick up documents.
7. Provide to prospects basic factual information on listed property that might commonly appear in advertisements in a newspaper, real estate publication or internet website.
8. Schedule appointments for showing property listed for sale or rent.
9. Communicate with licensees, property owners, prospects, inspectors, etc. to coordinate or confirm appointments.
10. Show rental properties managed by the employee’s employing broker to prospective tenants and complete and execute preprinted form leases for the rental of such properties.
11. Type offers, contracts and leases from drafts of preprinted forms completed by a licensee.
12. Record and deposit earnest money deposits, tenant security deposits and other trust monies, and otherwise maintain records of trust account receipts and disbursements, under the close supervision of the office broker-in-charge, who is legally responsible for handling trust funds and maintaining trust accounts.
13. Assist a licensee in assembling documents for closing.
14. Compute commission checks for licensees affiliated with a broker or firm and act as bookkeeper for the firm’s bank operating accounts.

#### **Exemptions [G.S. 93A-2(c)]**

The following persons and organizations are specifically exempted from the requirement for real estate licensure:

1. A **business entity** selling or leasing real estate owned by the business entity when the acts performed are in the regular course of or are incident to the management of that real estate and the investment therein. This exemption extends to officers and employees of an exempt corporation, the general partners of an exempt partnership, and the managers of an exempt limited liability company when engaging in acts or services for which the corporation, partnership or limited liability company would be exempt.
2. A person acting as an **attorney-in-fact** under a power of attorney from the owner authorizing the final con-

summation of performance of any contract for the sale, lease or exchange of real estate. (Note: This limited exemption applies only to the final completion of a transaction already commenced. The licensing requirement may not be circumvented by obtaining a power of attorney.)

3. An **attorney-at-law** who is an active member of the North Carolina State Bar only when performing an act or service that constitutes the practice of law under Chapter 84 of the General Statutes. Thus, the attorney exemption is strictly limited and attorneys generally may NOT engage in real estate brokerage practice without a real estate license.
4. A person acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under a court order.
5. A **trustee** acting under a written trust agreement, deed of trust or will or the trustee’s regular salaried employees.
6. **Certain salaried employees of broker-property managers.** (See G.S. 93A-2(c)(6) for details.)
7. An individual owner selling or leasing the owner’s own property.
8. A **housing authority** organized under Chapter 157 of the General Statutes and any regular salaried employee with regard to the sale or lease of property owned by the housing authority or to the subletting of property which the housing authority holds as tenant.

## **THE REAL ESTATE COMMISSION**

### **Composition [G.S. 93A-3(a)]**

The Real Estate Commission consists of nine (9) members who serve three-year terms. Seven members are appointed by the Governor and two are appointed by the General Assembly upon the recommendations of the Speaker of the House of Representatives and the President Pro Tempore of the Senate. At least three (3) members must be licensed brokers. At least two (2) members must be “public members” who are NOT involved directly or indirectly in the real estate brokerage or appraisal businesses.

### **Purpose and Powers [G.S. 93A-3(a), (c) and (f); G.S. 93A-6(a) and (b); G.S. 93A-4(d), 4.2 and 93A-33]**

The principal purpose of the Real Estate Commission is to protect the interests of members of the general public in their dealings with real estate brokers. This is accomplished through the exercise of the following statutory powers granted to the Commission:

1. Licensing real estate brokers and brokerage firms, and registering time share projects.
2. Establishing and administering prelicensing education programs for prospective licensees and postlicensing and continuing education programs for licensees.
3. Providing education and information relating to the real estate brokerage business for licensees and the

general public.

4. Regulating the business activities of brokers and brokerage firms, including disciplining licensees who violate the License Law or Commission rules.

It should be noted that the Commission is specifically prohibited, however, from regulating commissions, salaries or fees charged by real estate licensees and from arbitrating disputes between parties regarding matters of contract such as the rate and/or division of commissions or similar matters. [See G.S. 93A-3(c) and Rule A.0109.]

#### **Disciplinary Authority [G.S. 93A-6(a)-(c)]**

The Real Estate Commission is authorized to take a variety of disciplinary actions against licensees who the Commission finds guilty of violating the License Law or Commission rules while acting as real estate licensees. These are: **reprimand**, **censure**, **license suspension** and **license revocation**. The License Law also permits a licensee under certain circumstances to surrender his/her license with the consent of the Commission. Disciplinary actions taken against licensees are regularly reported in the Commission's periodic newsletter which is distributed to all licensees and also may be reported in local and regional newspapers.

It should be noted that licensees may be subject to the same disciplinary action for committing acts prohibited by the License Law when selling, leasing, or buying real estate for themselves, as well as for committing such acts in transactions handled as agents for others. [G.S. 93A-6(b)(3)]

The Commission also has the power to seek in its own name **injunctive relief** in superior court to prevent any person (licensees and others) from violating the License Law or Commission rules. A typical example of when the Commission might pursue injunctive relief in the courts is where a person engages in real estate activity without a license or during a period when the person's license is suspended, revoked or expired. [G.S. 93A-6(c)]

*Any violation of the License Law or Commission rules is a criminal offense (misdemeanor) and may be prosecuted in a court of law.* However, a finding by the Commission that a licensee has violated the License Law or Commission rules does not constitute a criminal conviction. [G.S. 93A-8]

## **PROHIBITED ACTS BY LICENSEES**

**G**.S. 93A-6 provides a list of prohibited acts which may result in disciplinary action against licensees. Discussed below are various prohibited acts, except for those related to handling and accounting for trust funds, broker's responsibility for closing statements, and the failure to deliver certain instruments to parties in a transaction, which are discussed in the subsequent sections on "General Brokerage Provisions" and "Handling Trust Funds."

#### **Important Note**

The provisions of the License Law relating to misrepresentation or omission of a material fact, conflict of interest, licensee competence, handling of trust funds, and improper, fraudulent or dishonest dealing generally apply in-

dependently of other statutory law or case law such as the law of agency. Nevertheless, other laws may affect the application of a License Law provision. For example, the N.C. Tenant Security Deposit Act requires an accounting to a tenant for a residential security deposit within 30-60 days after termination of a tenancy. License Law provisions (and Commission rules) require licensees to account for such funds within a reasonable time. Thus, in this instance, a violation of the Tenant Security Deposit Act's provisions would also be considered a violation of the License Law.

Similarly, the law of agency and the law of contracts as derived from the common law may impact the application of License Law. Thus, a licensee's agency status and role in a transaction might affect the licensee's duties under the license law. Examples of how an agent's duties under the License Law may be affected by the application of other laws are included at various points in this section on "Prohibited Acts by Licensees."

#### **Misrepresentation or Omission [G.S. 93A-6(a)(1)]**

Misrepresentation or omission of a material fact by a licensee is prohibited, and this prohibition includes both "willful" and "negligent" acts. A "willful" act is one that is done intentionally and deliberately, while a "negligent" act is one that is done unintentionally. A "**misrepresentation**" is communicating false information, while an "**omission**" is failing to provide or disclose information where there is a duty to provide or disclose such information.

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#### **Material Facts**

For purposes of applying G.S. 93A-6(a)(1), whether a fact is "material" depends on the facts and circumstances of a particular transaction and the application of statutory and/or case law. The Commission has historically interpreted "**material facts**" under the Real Estate License Law to include **at least**:

**Facts about the property itself** (such as a structural defect or defective mechanical systems);

**Facts relating directly to the property** (such as a pending zoning change or planned highway construction in the immediate vicinity); and

**Facts relating directly to the ability of the agent's principal to complete the transaction** (such as a pending foreclosure sale).

**Facts that are known to be of special importance to a party** (such as a buyer wanting the ability to add a pool.)

*Regardless of which party in a transaction a real estate agent represents, the facts described above must be disclosed to both the agent's principal and to third parties the agent deals with on the principal's behalf. In addition, an agent has a duty to disclose to his or her principal any information that may affect the principal's rights and interests or influence the principal's decision in the transaction.*

**Death or Serious Illness of Previous Property Occupant** — Note, however, that G.S. 39-50 and 42-14.2 specifically provide that the fact that a property was occu-

pied by a person who died or had a serious illness while occupying the property is NOT a material fact. Thus, agents do not need to voluntarily disclose such a fact. If a prospective buyer or tenant specifically asks about such a matter, the agent may either decline to answer or respond honestly. If, however, a prospective buyer or tenant inquires as to whether a previous owner or occupant had AIDS, the agent is prohibited by fair housing laws from answering such an inquiry because persons with AIDS are considered to be “handicapped” under such laws and disclosure of the information may have the effect of discriminating against the property owner based on the handicapping condition.

**Convicted Sex Offender Occupying, Having Occupied or Residing Near a Property** — Note also that the same North Carolina statutes (G.S. §39-50 and §42-14.2) that state the death or serious illness of a previous occupant of a property is not a material fact in a real estate transaction contain a similar provision relating to **convicted sex offenders**. The statutes provide that when offering a property for sale, rent or lease, “...it shall not be a material fact...that a person convicted of any crime for which registration is required by Article 27A of Chapter 14 of the General Statutes [statutes establishing registration programs for sex offenders and sexually violent predators] occupies, occupied or resides near the property; provided, however, that no seller [or landlord or lessor] may knowingly make a false statement regarding such fact.” Therefore, an agent involved in a transaction is **not** required to volunteer to a prospective buyer or tenant any information about registered sex offenders as described above. If a buyer or tenant specifically asks about sex offenders in a neighborhood, an agent need only answer truthfully to the best of his/her knowledge. In the absence of a specific inquiry about this matter from the buyer, an agent representing the buyer who knows, for example, that a registered sex offender lives in the immediate area, will probably want to disclose the information in the interest of serving his/her buyer-client even though not required by law to do so. On the other hand, in the absence of a specific inquiry by the buyer, if the agent who knows such information represents the seller, the agent will probably want to check with his/her seller-client before disclosing that information since voluntary disclosure is likely not in the seller’s best interest. Any agent also has the option of advising a prospective buyer or tenant about how to check the statewide sex offender registry online at [www.sexoffender.ncsbi.gov/search.aspx](http://www.sexoffender.ncsbi.gov/search.aspx).

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This introductory information should assist in understanding G.S. 93A-6(a)(1), which establishes four separate (although closely related) categories of conduct which are prohibited. These are discussed below, and a few examples of prohibited conduct are provided for each category.

**Willful Misrepresentation** — *This occurs when a licensee who has “actual knowledge” of a material fact deliberately misinforms a buyer, seller, tenant or landlord concerning such fact.*

**Note:** The following examples of willful misrepresentation apply regardless of the licensee’s status (seller’s agent or buyer’s agent) or role (listing agent or selling agent).

**Example:** An agent knows that a listed house has a severe problem with water intrusion in the crawl space during heavy rains. In response to a question from a prospective buyer who is being shown the house during dry weather, the agent states that there is no water drainage problem.

**Example:** An agent knows that the heat pump at a listed house does not function properly, but tells a prospective buyer that all mechanical systems and appliances are in good condition.

**Example:** An agent knows that the approximate market value of a house is \$225,000, but tells the property owner that the house is worth \$250,000 in order to obtain a listing.

**Negligent Misrepresentation** — *This occurs when a licensee unintentionally misinforms a buyer, seller, tenant or landlord concerning a material fact either because the licensee does not have actual knowledge of the fact, because the licensee has incorrect information, or because of a mistake by the licensee. If a reasonably prudent licensee “should reasonably have known” the truth of the matter that was misrepresented, then the licensee may be guilty of “negligent misrepresentation” even though the licensee was acting in good faith.*

Negligent misrepresentation by real estate licensees occurs frequently in real estate transactions. A very common situation is the recording of incorrect information about a property in an MLS listing due to the negligence of the listing agent. When a prospective buyer is subsequently provided the incorrect information from the MLS by the agent working with the buyer, a negligent misrepresentation by the listing agent occurs.

*A listing agent is generally held to a higher standard with regard to negligent misrepresentation of material facts about a listed property to a buyer than is a selling agent who is acting as a seller’s subagent. This is because (1) The listing agent is in the best position to ascertain facts about the property, (2) the listing agent is expected to take reasonable steps to assure that property data included with the listing is correct and (3) it is generally considered reasonable for a selling agent to rely on the accuracy of the listing data except in those situations where it should be obvious to a reasonably prudent agent that the listing information is incorrect. However, a buyer’s agent may in some cases be held to a higher standard than a seller’s subagent because of the buyer’s agent’s duties to the buyer under the law of agency and the buyer’s agent’s special knowledge of the buyer’s particular situation and needs.*

**Example:** An agent has previously sold several lots in a subdivision under development and all those lots passed a soil suitability test for an on-site septic system. The agent then sells Lot 35 without checking as to whether this lot satisfies the soil test; however, the agent informs the buyer that Lot 35 will support

an on-site septic system when in fact the contrary is true. (While the agent's conduct may not rise to the level of willful disregard for the truth of the matter, the agent was at least negligent in not checking the soil test result on Lot 35 and is therefore guilty of negligent misrepresentation. This result is not affected by the agent's agency status or role in the transaction.)

**Example:** An owner tells a listing agent with ABC Realty that his house has 1850 heated square feet. Without verifying the square footage, the agent records 1850 square feet on the listing form and in the listing information published in the local MLS. The house is subsequently sold by a sales agent with XYZ Realty who tells the buyer that according to the MLS data, the house has 1850 square feet. The buyer later discovers that the house actually has only 1750 square feet. The listing agent is guilty of a negligent misrepresentation. Although the selling agent directly communicated the incorrect information to the buyer, he/she probably acted reasonably in relying on the data in MLS. In this case, if the selling agent had no reason to doubt the MLS data, the selling agent is not guilty of a negligent misrepresentation. Note, however, that if the square footage discrepancy had been sufficiently large that a reasonably prudent selling agent should have known the listed data was incorrect, then the selling agent would also have been guilty of negligent misrepresentation. The result in this particular example is not affected by the selling agent's agency status (seller's subagent or buyer's agent), although this might be a factor in other situations.

**Willful Omission** — *This occurs when a licensee has "actual knowledge" of a material fact and a duty to disclose such fact to a buyer, seller, tenant, or landlord, but deliberately fails to disclose such fact.*

**Example:** An agent knows that a zoning change is pending that would adversely affect the value of a listed property, but fails to disclose such information to a prospective buyer. The agent has committed a willful omission regardless of the agent's agency status or role in the transaction.

**Example:** An agent knows that a listed house has a major defect (e.g., crumbling foundation, no insulation, malfunctioning septic tank, leaking roof, termite infestation, or some other problem) but fails to disclose such information to a prospective buyer. The agent has committed a willful omission and this result is not affected by the agent's agency status or role in the transaction.

**Example:** A selling agent working with a buyer as a subagent of the seller learns that the buyer is willing to pay more than the price in the buyer's offer, but fails to disclose this information to the seller (or

listing agent) when presenting the offer. The selling agent has committed a willful omission. If, however, the selling agent were acting as a buyer's agent, then the result would be different because the agent does not represent the seller and has a duty not to disclose to the seller confidential buyer information that would be harmful to the buyer's interest.

**Example:** A buyer's agent becomes aware that the seller with whom his buyer is negotiating is under pressure to sell quickly and may accept much less than the listing price. Believing such information should always be kept confidential, the buyer's agent does not provide the buyer with this information. The buyer's agent is guilty of a willful omission. An agent must disclose to his/her principal any information that might affect the principal's decision in the transaction.

**Example:** Suppose in the immediately preceding example that the seller's property is listed with the firm of the buyer's agent where it represents both the seller and the buyer. In this situation, the buyer's agent would not be considered to have committed a willful omission under the License Law by not disclosing the information about the seller's personal situation to the buyer.

**Negligent Omission** — *This occurs when a licensee does NOT have actual knowledge of a material fact and consequently does not disclose the fact, but a reasonably prudent licensee "should reasonably have known" of such fact.* In this case, the licensee may be guilty of "negligent omission" if he/she fails to disclose this fact to a buyer, seller, tenant or landlord, even though the licensee acted in good faith in the transaction.

The prohibition against negligent omission creates a "duty to discover and disclose" material facts which a reasonably prudent licensee would typically have discovered in the course of the transaction. A listing agent is typically in a much better position than a selling agent to discover material facts relating to a listed property and thus, will be held to a higher standard than will a selling agent acting as a seller's subagent. On the other hand, a buyer's agent in some circumstances may be held to a higher standard than a seller's subagent because of the buyer's agent's duties to the buyer under the law of agency, particularly if the buyer's agent is aware of a buyer's special needs with regard to a property. Again we see how the agency relationships between agents and principals to a transaction and the licensee's role in the transaction can affect a licensee's duties and responsibilities under the License Law.

Instances of negligent omission occur much less frequently than instances of negligent misrepresentation. This is because most facts about a listed property are recorded on a detailed property data sheet from which information is taken for inclusion in MLS listings. If incorrect information taken from an MLS listing is passed on to a prospective purchaser, then a "misrepresentation," rather than an "omission," has occurred. Nevertheless, there are examples of negligent omission which can be cited.

**Example:** A listing agent lists for sale a house located adjacent to a street that is about to be widened into a major thoroughfare. The thoroughfare project has been very controversial and highly publicized. The city recently finalized its decision to proceed with the project and the plans for the street widening are recorded in the city planner's office. A buyer, working with a selling agent, makes an offer to buy the house. The listing agent does not disclose the street widening plans to the buyer or selling agent and claims later that he/she was not aware of the plans. In this situation, both the listing and selling agents are probably guilty of negligent omission because each "should reasonably have known" of the street widening plans, clearly a material fact, and should have disclosed this fact to the buyer. This result is not affected by whether the selling agent is a buyer agent or seller's subagent.

**Example:** A seller has a 30,000 square foot commercial property for sale which cannot be expanded under local zoning laws. The buyer is looking for property in the 25,000 - 30,000 square foot range, but has told his buyer's agent that he needs a property where he can expand to 50,000 square feet or more in the future. The seller does not think to advise the buyer's agent that the property cannot be expanded, and the buyer's agent makes no inquiry about it although he is aware of the buyer's special needs. If the buyer purchases the property without knowing about the restriction on expansion, the buyer's agent is guilty of a negligent omission for failing to discover and disclose a special circumstance that the agent knew was especially important to his/her client.

#### **Making False Promises [G.S. 93A-6(a)(2)]**

Real estate brokers are prohibited from "making any false promises of a character likely to influence, persuade or induce." The promise may relate to any matter which might influence, persuade or induce a person to perform some act he/she might not otherwise perform.

**Example:** An agent promises a prospective apartment tenant that the apartment will be repainted before the tenant moves in. The agent then fails to have the work done after the lease is signed.

**Example:** An agent promises a property owner that if he/she lists his/her house for sale with the agent's firm, then the firm will steam-clean all the carpets and wash all the windows. The firm then fails to have the work done after the listing contract is signed.

#### **Other Misrepresentations [G.S. 93A-6(a)(3)]**

Real estate brokers are prohibited from pursuing a course of misrepresentation (or making of false promises) through other agents or salespersons or through advertising or other means.

**Example:** In marketing subdivision lots for a developer, a broker regularly advertises that the lots for sale are suitable for residential use when in fact the lots

will not pass a soil suitability test for on-site sewage systems.

**Example:** A broker is marketing a new condominium complex which is under construction. Acting with the full knowledge and consent of the broker, the broker's agents regularly inform prospective buyers that units will be available for occupancy on June 1, when in fact the units won't be available until at least September 1.

**Conflict of Interest [G.S. 93A-6(a)(4) and (6); Rule A.0104(d)] and (i)**

**Undisclosed Dual Agency.** G.S. 93A-6(a)(4) prohibits a real estate agent from "*acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts.*" Commission Rule A.0104(d) and (i) takes this a step further by providing that a broker or brokerage firm representing one party in a transaction shall not undertake to represent another party in the transaction without the express written authority (i.e., authorization of dual agency) of each party (subject to one exception, explained as part of the dual agency discussion in the "General Brokerage Provisions" section). A typical violation of this provision occurs when the agent has only one principal in a transaction but acts in a manner which benefits another party without the principal's knowledge. In such a situation, the agent violates the duty of loyalty and consent owed to his principal.

**Example:** A house is listed with Firm X. When showing the house to a prospective buyer not represented by Firm X, an agent of Firm X advises the buyer to offer substantially less than the listing price because the seller must move soon and is very anxious to sell the property fast. The agent and Firm X are contractually obligated to represent only the seller. By advising the prospective buyer as indicated in this example, the agent is acting to benefit the buyer without the seller's knowledge and consent. This act violates both the License Law and the Law of Agency.

**Example:** An agent with Firm Y assists her sister in purchasing a house listed with Firm X without advising Firm X or the seller of her relationship with the buyer. The agent is "officially" acting as a subagent of the seller in the transaction. In this situation, there is an inherent conflict of interest on the part of the agent. If the agent does not disclose her relationships to both parties, then the agent violates both the License Law and Law of Agency. In fact, since her allegiance lies with her sister, the agent should instead act as a buyer's agent from the outset. The same would be true if the buyer were a close friend or business associate of the agent, or in any way enjoyed a special relationship to the agent which would clearly influence the agent to act in behalf of the buyer rather than the seller.

**Self-dealing.** G.S. 93A-6(a)(4) also prohibits any "self-dealing" on the part of an agent. For example, if an agent attempts to make a secret profit in a transaction where

he is supposed to be representing a principal, then the agent violates this “conflict of interest” provision.

**Example:** An agent lists a parcel of undeveloped property which is zoned for single-family residential use. The agent knows that this property is about to be rezoned for multi-family residential use, which will greatly increase the property’s value. Rather than informing the seller of this fact, the agent offers to buy the property at the listed price, telling the seller that he wants to acquire the property as a long-term investment. The deal closes. Several months later, after the rezoning has been accomplished, the agent sells the property at a substantial profit.

**Representing Another Broker without Consent.** G.S. 93A-6(a)(6) prohibits a licensee from “representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is associated.” While brokers may work for or be associated with more than one real estate company at the same time, *so long as* they have the express consent of all brokers-in-charge, provisional brokers may never engage in brokerage activities for more than one company at a time.

**Improper Brokerage Commission** [G.S. 93A-6(a)(5) and (9)]

A broker may NOT pay a commission or valuable consideration to any person for acts or services performed in violation of the License Law. [G.S. 93A-6(a)(9)] *This provision flatly prohibits a broker from paying an unlicensed person for acts which require a real estate license.* Following are examples of prohibited payments:

**Example:** The payment by brokers of commissions to previously licensed sales associates who failed to properly renew their licenses for any acts performed after their licenses had expired. Note that payment could properly be made for commissions earned while the license was on active status, even if the license is inactive or expired at time of payment. The determining factor is whether the license was on active status at the time all services were rendered which generated the commission.

**Example:** The payment of a commission, salary or fee by brokers to unlicensed employees or independent contractors (e.g., secretaries, “trainees” who haven’t passed the license examination, etc.) for performing acts or services requiring a real estate license.

**Example:** The payment by licensees of a “finder’s fee,” “referral fee,” “bird dog fee,” or any other valuable consideration to unlicensed persons who find, introduce, or bring together parties to a real estate transaction. This is true even if the ultimate consummation of the transaction is accomplished by a licensee and even if the act is performed without expectation of compensation. Thus, a licensee may NOT compensate a friend, relative, former client or any

other unlicensed person for “referring” a prospective buyer, seller, landlord or tenant to such licensee. This prohibition extends to “owner referral” programs at condominium or time share complexes and “tenant referral” programs at apartment complexes.

In addition, a *provisional* broker may NOT accept any compensation for brokerage services from anyone other than his employing broker or brokerage firm. Consequently, *a broker may not pay a commission or fee directly to a provisional broker of another broker or firm. Any such payment must be made through the provisional broker’s employing broker or firm.* [G.S. 93A-6(a)(5)]

**Note:** See also the discussion of Rules A.0109 and A.0120 on “Brokerage Fees and Compensation” under the subsequent section titled “General Brokerage Provisions.”

**Unworthiness and Incompetence** [G.S. 93A-6(a)(8)]

This broad provision authorizes the Real Estate Commission to discipline any licensee who, based on his or her conduct and consideration of the public interest, is found to be unworthy or incompetent to work in the real estate business. A wide range of conduct may serve as the basis for a finding of unworthiness or incompetence, including conduct which violates other specific provisions of the License Law or Commission rules. Here are a few examples of improper conduct which do not specifically violate another License Law provision but which might support a finding of unworthiness or incompetence.

1. Failure to properly complete (fill in) real estate contracts or to use contract forms which are legally adequate.
2. Failure to diligently perform the services required under listing contracts or property management contracts.
3. Failure to provide accurate income/expense reports to property owners.

**Improper Dealing** [G.S. 93A-6(a)(10)]

This broad provision prohibits a real estate licensee from engaging in “any other conduct [not specifically prohibited elsewhere in the License Law] which constitutes **improper, fraudulent or dishonest dealing.**” The determination as to whether particular conduct constitutes “improper, fraudulent or dishonest dealing” is made by the Real Estate Commission on a case-by-case basis. Therefore, a broad range of conduct might be found objectionable under this provision, depending on the facts in a case.

One category of conduct which violates this provision is any breach of the duty to exercise skill, care, and diligence in behalf of a client under the Law of Agency. (Note that other breaches of Agency Law duties constituting either a “misrepresentation or omission,” a “conflict of interest” or a “failure to properly account for trust funds” are covered by other specific statutory provisions.)

Another category of conduct which violates this provision is any violation of the State Fair Housing Act. This is mentioned separately under the “Discriminatory Practices”

heading.

**Example:** An agent assists a prospective buyer in perpetrating a fraud in connection with a mortgage loan application by preparing two contracts — one with false information for submission to the lending institution, and another which represents the actual agreement between seller and buyer. (This practice is commonly referred to as “dual contracting” or “contract kiting.”)

**Example:** A broker lists a property for sale and agrees in the listing contract to place the listing in the local MLS, to advertise the property for sale, and to use his best efforts in good faith to find a buyer. The broker places a “For Sale” sign on the property, but fails to place the property in the MLS for more than 30 days and fails to otherwise advertise the property during the listing period. (The broker has failed to exercise reasonable skill, care and diligence in behalf of his client as required by the listing contract and the Law of Agency.)

**Example:** An agent is aware that the owners of a house listed with his company are out of town for the weekend, yet the agent gives a prospective buyer the house keys and allows such prospect to look at the listed house without accompanying the prospect. (The agent has failed to exercise reasonable skill, care and diligence in behalf of his client.)

**Discriminatory Practices** [G.S. 93A-6(a)(10); Rules A.1601 and A.0120]

Any conduct by a licensee that violates the provisions of the State Fair Housing Act is considered by the Commission to constitute “improper conduct” and to be a violation of the License Law.

Additionally, a licensee shall not conduct brokerage activities or otherwise promote their status as a real estate broker in any manner that discriminates on the basis of race, color, religion, national origin, sex, familial status, or disability.

**Practice of Law** [G.S. 93A-4(e); G.S. 93A-6(a)(11); Rule A.0111]

Real estate licensees may not perform for others any legal service described in G.S. 84-2.1 or any other legal service. Following are several examples of real estate-related legal services which licensees may NOT provide.

1. Drafting legal documents such as deeds, deeds of trust, leases and real estate sales contracts for others. Although licensees may “fill in” or “complete” pre-printed real estate contract forms which have been drafted by an attorney, they may NOT under any circumstances complete or fill in deed or deed of trust forms.
2. Abstracting or rendering an opinion on legal title to real property.
3. Providing “legal advice” of any nature to clients and customers, including advice concerning the nature of

any interest in real estate or the means of holding title to real estate. (Note: Although providing advice concerning the legal ramifications of a real estate sales contract is prohibited, merely “explaining” the provisions of such a contract is not only acceptable, but highly recommended.)

**Violating any Commission Rule** [G.S. 93A-6(a)(15)]

The law also has a “catch-all” provision that subjects a licensee to disciplinary action for violating any rule adopted by the Commission.

**Note:** The provisions of G.S. 93A-6(a)(12)-(14) are addressed elsewhere in these “Comments” under the “General Brokerage Provisions” section.

**Other Prohibited Acts** [G.S. 93A-6(b)]

In addition to those prohibited acts previously discussed, G.S. 93A-6(b) prescribes several other specific grounds for disciplinary action by the Commission, including:

1. Where a licensee has obtained a license by false or fraudulent representation (e.g., falsifying documentation of prelicensing education, failing to disclose prior criminal convictions, etc.).
2. Where a licensee has been convicted of, or pled guilty or no contest to, a number of listed misdemeanors or felonies plus any other offense that shows professional unfitness or involves moral turpitude that would reasonably affect the licensee’s performance in the real estate business.
3. Where a broker’s unlicensed employee, who is exempt from licensing under G.S. 93A-2(c)(6) (property management exception), has committed an act which, if committed by the broker, would have constituted a violation of G.S. 93A-6(a) for which the broker could be disciplined.
4. Where a licensee who is also licensed as an appraiser, attorney, home inspector, mortgage broker, general contractor, or another licensed profession or occupation has been disciplined for an offense under any law involving fraud, theft, misrepresentation, breach of trust or fiduciary responsibility, or willful or negligent malpractice..

Lastly, be aware that under (b)(3), licensees may be disciplined for violating any of the 15 provisions under subsection (a) when selling, buying, or leasing their own property.

## GENERAL BROKERAGE PROVISIONS

Discussed below are selected Commission rules related to general brokerage.

**Agency Agreements and Disclosure** [G.S. 93A-13 and Rule A.0104]

Provided below is a brief summary of the various provisions of the Commission’s rule regarding agency agreements and disclosure. For a much more in-depth discussion of this rule and its application, the reader is referred to the Commis-

sion's *North Carolina Real Estate Manual*.

**Agency Agreements.** G.S. 93A-13 and Rule A.0104(a) requires all agency agreements for brokerage services (in both sales and lease transactions) to be in writing and signed by the parties thereto. Rule A .0104(a):

- Requires agency agreements with **property owners** (both sellers and lessors) of any type of property to be in writing prior to the broker providing any services;
- Allows an express **oral buyer/tenant agency agreement** from the outset of the relationship, *but the agreement must be reduced to writing no later than the time any party to the transaction makes an offer*. As a practical matter, this oral agreement needs to address all key aspects of the relationship, including agent compensation, authorization for dual agency, etc.

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**(Note: A buyer/tenant agency agreement must be in writing from the outset if it seeks to limit the buyer/tenant's right to work with other agents or binds the client to the agent for any definite time period. In other words, an oral buyer/tenant agency agreement must be "non-exclusive" and must be for an indefinite period and terminable by the client at any time.)**

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Further, every **written** agency agreement of any kind must also:

- *Provide for its existence for a definite period of time and terminate without prior notice at the expiration of that period. [Exception: an agency agreement between a broker and a landlord to procure tenants for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract or renewal period.]*
- *Contain the Rule A.0104(b) non-discrimination (fair housing) provision, namely: "The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any party or prospective party." (This provision must be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agency agreement.)*
- *Include the license number of the individual licensee who signs the agreement.*

Allowing an agent to work with a buyer under an express *oral* buyer agency agreement is intended to address the problem of buyers being reluctant to sign a written buyer agency agreement at the outset of their relationship with a buyer agent. The idea underlying this approach is to allow an agent to work temporarily with a prospective buyer as a buyer's agent under an oral agreement while the agent establishes a rapport with the buyer that makes the buyer feel more comfortable with signing a written buyer agency agreement.

Although the rule allows oral buyer/tenant agency agreements until the point in time when any party is ready to make

an offer, it nevertheless is highly advisable that agents have such agreements reduced to writing and signed by the buyer/tenant at the earliest possible time in order to avoid misunderstanding and conflict between the buyer/tenant and agent. Recall also that the agent must obtain a written buyer/tenant agency agreement from the client not later than the time either party to the transaction extends an offer to the other. In practice, this means the buyer agent should reduce the agency agreement to writing first, then write up an offer, in order to ensure that no offer is made to a seller without having the written agency agreement completed.

If the buyer will not sign a written buyer agency agreement prior to making or receiving an offer, then the agent may not continue to work with the buyer as a buyer's agent. Moreover, the agent may not begin at this point to work with the buyer as a seller's subagent unless the agent (1) fully advises the buyer of the consequences of the agent switching from buyer's agent to seller's agent (including the fact that the agent would have to disclose to the seller any information, including "confidential" information about the buyer, that might influence the seller's decision in the transaction), (2) obtains the buyer's consent, and (3) obtains the consent of the seller and listing firm, which is the seller's agent. The foregoing applies equally to brokers working with tenants as a tenant agent.

**Agency Disclosure Requirement.** While Rule A.0104(a) requires all agency agreements, whether for lease or sales transactions, to be in writing, the *Rule A.0104(c) agency disclosure requirement applies only to sales transactions. It requires licensees to provide prospective buyers and sellers, at "first substantial contact," with a copy of the Working with Real Estate Agents disclosure, to review the disclosure with them and then reach an agreement regarding their agency relationship.* The licensee providing the disclosure should also include his/her name and license number on the form. Note that the obligation under this rule is not satisfied merely by handing the prospective seller or buyer the form to read. The agent is required to review the contents with the prospective buyer or seller and then reach agreement with the prospective buyer or seller as to whether the agent will work with the buyer or seller as his/her agent or as the agent of the other party.

In the case of a prospective **seller**, the agent may either (1) act as the seller's agent, which is the typical situation and requires a written agreement from the outset of their relationship, or (2) work with the seller as a buyer's agent if the agent already represents a prospective buyer.

In the case of a prospective **buyer**, the agent may either (1) act as the buyer's agent under either an oral or written agreement as addressed in Rule A.0104(a), or (2) work with the buyer as a seller's agent, disclosure of which must be in writing from the outset.

**Disclosure of Agency Status by Sellers' Agents and Subagents to Prospective Buyers:** Paragraph (e) of Rule A.0104, like paragraph (c), requires a seller's agent or sub-

agent in sales transactions to disclose his/her agency status in writing to a prospective buyer at the “first substantial contact” with the buyer. It is recommended that sellers’ agents make this required written disclosure using the form provided for this purpose in the *Working with Real Estate Agents* disclosure that must be provided to buyers (as well as to sellers) at first substantial contact. This form has a place for the buyer to acknowledge receipt. The disclosure may, however, also be made using a different form — *the most important point is that the disclosure be made in writing in a timely manner*. The reason for this requirement is that buyers tend to assume that an agent they contact to work with them in locating a property for purchase is “their” agent and working primarily in their interest. This may or may not be the case in reality. *The purpose of the disclosure requirement is to place prospective buyers on notice that the agent they are dealing with is NOT “their” agent before the prospective buyer discloses to the agent information which the buyer would not want a seller to know because it might compromise the buyer’s bargaining position.*

Most frequently, “first substantial contact” will occur at the first “face-to-face” meeting with a prospective buyer. However, the point in time that “first substantial contact” with a prospective buyer occurs will vary depending on the particular situation and may or may not be at the time of the first or initial contact with the prospective buyer. Many first contacts are by telephone and do not involve discussions which reach the level that would require disclosure, although some initial phone contacts, especially those with out-of-town buyers, could reach this level.

*“First substantial contact” occurs at the point in time when a discussion with a prospective buyer begins to focus on the buyer’s specific property needs and desires or on the buyer’s financial situation. Typically, that point in time is reached when the agent is ready to solicit information from the prospective buyer that is needed to identify prospective properties to show the buyer. Therefore, an agent planning to work with a prospective buyer as a seller’s agent or subagent should assure that disclosure of his/her agency status is made in writing to the prospective buyer prior to obtaining from the prospective buyer any personal or confidential information that the buyer would not want a seller to know.*

A few **examples of such personal or confidential information include:** *The maximum price a buyer is willing to pay for a property; the buyer’s ability to pay more than the price offered by the buyer; or the fact that a buyer has a special interest in purchasing the seller’s property rather than some other similar property.* In any event, the disclosure must be made prior to discussing with the prospective buyer his/her specific needs or desires regarding the purchase of a property. As a practical matter, this means the *disclosure will always need to be made prior to showing a property to a prospective buyer.* The best policy is to simply make the disclosure at the earliest possible time.

If first substantial contact occurs by telephone or by

means of other electronic communication where it is not practical to provide written disclosure, the agent shall immediately disclose by similar means whom he/she represents and shall immediately, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the written disclosure to the buyer.

**Disclosure of Agency Status by Buyers’ Agents to Sellers or Sellers’ Agents.** Paragraph (f) of Rule A.0104 *requires a buyer’s agent to disclose his/her agency status to a seller or seller’s agent at the “initial contact” with the seller or seller’s agent.* “Initial contact” will typically occur when a buyer’s agent telephones or otherwise contacts the listing firm to schedule a showing. The initial disclosure may be oral, but a written confirmation of the previous oral disclosure must be made (except in auction sale transactions) no later than the time of delivery of an offer to purchase. The written confirmation may be (and usually is) included in the offer to purchase. In fact, Commission Rule A.0112(a) (19) requires that any preprinted offer to purchase and contract form used by an agent include a provision providing for confirmation of agency status by each real estate agent (and firm) involved in the transaction.

**Consent to Dual Agency.** Paragraph (d) of Rule A.0104 requires generally that an agent must obtain the written authority of all parties prior to undertaking to represent those parties as a dual agent. It is important to note that this requirement applies to all real estate transactions (sales and lease/rentals), not just sales transactions. [In sales transactions, this written authority to act as a dual agent is usually included in the listing and buyer agency contracts. If those contracts do not grant such authority, then the agent must have both the seller and buyer consent to the dual agency prior to beginning to act as a dual agent for both parties.]

Paragraph (d) of Rule A.0104 currently *requires written authority for dual agency from the formation of the relationship except situations where a buyer/tenant is represented by an agent working under an oral agency agreement as permitted by A.0104(a), in which case written authority for dual agency must be obtained no later than the time one of the parties represented by the agent working as a dual agent makes an offer to purchase, sell, rent, lease, or exchange real estate to the other party.* Thus, it is permissible for the agent to operate for a limited period of time under an oral dual agency agreement. It is very important to remember that G.S. 93A-6(a)(4) still requires agents to obtain the consent of all parties prior to beginning to act as a dual agent for those parties. Therefore, it is essential that agents electing to operate as a dual agent for a limited period of time without obtaining this authority in writing still explain fully the consequences of their acting as a dual agent and obtain the parties’ oral consent.

As a practical matter in sales transactions, agents will frequently have already obtained written authority to act as a dual agent for in-house sales transactions at the time the initial written listing or buyer agency agreement is executed. However, under Paragraph (a) of Rule A.0104, many buyer’s

agents may elect to work with their buyer clients for a period of time under an oral buyer agency agreement. Paragraph (d) permits such buyer's agents to also operate for a limited period of time as a dual agent under an oral agreement in order to deal with situations where a buyer client is interested in a property listed with the agent's firm. Note that, *although an oral dual agency agreement for a limited period of time is permitted by Commission rules, it is strongly recommended that agents have any dual agency agreement in writing from the outset of the dual agency arrangement.* This will provide the agent with some evidence that the matter of dual agency was discussed with the parties and that they consented to it. Such evidence could prove quite useful if a party later asserts that the agent did not obtain their consent for dual agency in a timely manner.

**Auction Sales Exemption.** Paragraph (g) of Rule A.0104 provides that the provisions of Paragraphs (c), (d) and (e) of the Rule shall not apply to real estate licensees representing sellers in auction sales transactions. Note that in auction sales, the real estate agents involved almost invariably work only as seller's agents and this fact is considered to be self-evident. Thus, there is no need for agents to distribute and review the *Working with Real Estate Agents* brochure, no need for disclosure of agency status by the seller's agents, and no dual agency. For the unusual situation where a buyer may be represented by an agent in an auction sale transaction, Paragraph (h) of Rule A.0104 provides that such a buyer's agent shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation that he/she represents the buyer.

**Dual Agency Status of Firm.** Paragraph (i) of Rule A.0104 codifies in the Commission's rules the common law rule that *a firm which represents more than one party in the same real estate sales transaction is a dual agent, and further states that the firm, through the brokers affiliated with the firm, shall disclose its dual agency to the parties.* In other words, dual agency is not limited to those situations where an individual agent is working with both a buyer client and seller client (or lessor and commercial tenant) in the same transaction. If one agent of a firm is working with a buyer client of the firm and another agent of the same firm is working with a seller client of the firm in a transaction involving the sale of the seller client's property to the buyer client, then the firm is a dual agent (as it holds both agency agreements). However, a firm functions through its employees, namely, its associated agents; thus, under the common law, whenever the firm is a dual agent of certain parties in a transaction, all licensees affiliated with that firm are also dual agents of those parties in that transaction.

**Designated Agency.** Paragraphs (j) - (m) of Rule A.0104 authorize real estate firms to engage in a form of dual agency practice referred to in the rule as "**designated agency**" in certain **sales transactions involving in-house dual agency.** "*Designated agency involves appointing or "designating" an individual agent(s) in a firm to represent only the interests of the*

*seller and another individual agent(s) to represent only the interests of the buyer when a firm has an in-house dual agency situation.*

The principal advantage of the designated agency approach over the "standard" dual agency approach is that each of a firm's clients (seller and buyer) receive fuller representation by their designated agent. In the typical dual agency situation, client advocacy is essentially lost because the dual agent may not seek an advantage for (i.e., "advocate" for) one client to the detriment of the other client. The dual agent must remain completely neutral and impartial at all times. Designated agency returns "advocacy" to the services provided by the respective designated agents and allows them to more fully represent their respective clients.

Authority to practice designated agency must be in writing no later than the time a written dual agency agreement is required under A.0104(d). Additional required procedures for practicing designated agency are clearly spelled out in Paragraphs (j) - (m) and are not discussed further here. For more detailed coverage of dual and designated agency, the reader is once again referred to the Commission's *North Carolina Real Estate Manual*.

**Dual Agency by Individual Agent.** Paragraph (n) of Rule A.0104 authorizes individual agents representing both the buyer and seller in the same real estate sales transaction pursuant to a written dual agency agreement to include in the agreement a provision authorizing the agent not to disclose certain "confidential" information about one party to the other party without permission from the party about whom the information pertains. This provision is intended to allow individual dual agents to treat confidential information about their clients in a manner similar to that allowed for firms practicing designated agency.

**Brokers As Parties to Transactions.** There is an inherent conflict of interest presented by a broker representing the very party against whom the broker, as an interested party, is negotiating. Paragraph (o) of Rule A.0104 prohibits a broker who is selling property in which the broker has an ownership interest from representing a buyer of the property. Except that a broker who is selling commercial real estate, as defined in Rule .1802 of this Subchapter, in which the broker has less than 25% ownership interest may represent a buyer of that property if the buyer consents to the representation after full written disclosure of the broker's ownership interest. However, a firm listing a property owned by a broker affiliated with the firm may represent a buyer of that property so long as the individual broker representing the buyer does not have an ownership interest in the property and the buyer consents to the representation after full disclosure. Paragraph (p) of Rule A.0104 prohibits a listing broker or firm from purchasing a property listed by that broker or firm unless they first disclose to the seller in writing that a potential conflict of interest exists and that the seller may want to seek independent counsel. Prior to the listing broker entering into a purchase contract, the individ-

ual listing broker and firm must either terminate the listing agreement or transfer the listing to another broker in the firm. Prior to the firm entering into a purchase contract, the listing broker and firm must disclose to the seller in writing that the seller has the right to terminate the listing. The broker or firm must terminate the listing upon the request of the seller.

### **Broker Name and Address [Rule A.0103]**

A broker must notify the Commission in writing (may include online) within 10 days of each change in personal name, firm name, trade name, residence address and firm address, telephone number, and email address.

If a broker intends to advertise in any manner using a firm name or assumed name which does not set forth the surname of the broker, the broker must first file an assumed name certificate in compliance with GS 66-71.4 and must also notify the Commission of the use of such firm name or assumed name. For individuals and partnerships, a name is “assumed” when it does not include the surname of the licensee(s). For a firm required to be registered with the Secretary of State, a name is “assumed” when it is different from the firm’s legal name as registered with the Secretary of State. Note: most franchisees operate under assumed names. An Assumed Name certificate can be filed in the Register of Deeds office for uploading to the statewide database maintained by the Secretary of State.

A licensee operating as a sole proprietorship, partnership or business entity other than a corporation or limited liability company may NOT include in its legal or assumed name the name of an unlicensed person or a provisional broker.

A broker who proposes to use a business name that includes the name of another active, inactive or cancelled broker must have the permission of that broker or his or her authorized representative. This rule provision is intended to prohibit a broker or firm from using without proper authorization the name of some other broker or former broker who is not currently associated with the broker or firm, such as a former associate or a deceased broker.

### **Advertising [Rule A.0105]**

A licensee must have the proper authority to advertise. A broker may not advertise or display a “for sale” or “for rent” sign on a property without the written consent of the owner or the owner’s authorized agent. A broker may not advertise any brokerage service for another without the consent of his or her broker-in-charge and without including in any advertisement the name of the firm or sole proprietorship with which the broker is associated.

The rule also prohibits any advertisement by a licensee that indicates an offer to sell, buy, exchange, rent or lease real property is being made by the licensee’s principal without the involvement of a broker – i.e., a “**blind ad.**” *All advertising by a licensee must indicate that it is the advertisement of a broker or brokerage firm.*

### **Delivery of Instruments [G.S. 93A-6(a); Rule A.0106]**

Among other things, this rule, which implements G.S.

93A-6(a)(13), *requires agents to deliver to their customer or client copies of any required written agency agreement, contract, offer, lease, rental agreement, option or other related transaction document within three days of the broker’s receipt of the executed document.* Regarding offers, this does NOT mean that agents may in every case wait up to three days to present an offer to a seller. Rather, it means that an agent must, as soon as possible, present to the seller any offer received by the agent. If the agent is the “selling agent,” then the offer should be immediately presented to the “listing agent” who should, in turn, immediately present the offer to the seller. The “three-day” provision is included only to allow for situations where the seller is not immediately available (e.g., seller is out of town), and represents an outside time limit within which offers must always be presented. In all cases where the seller is available, the offer should be presented as soon as possible.

The same rule also means that a prospective buyer who signs an offer must immediately be provided a copy of such offer. (A photocopy is acceptable for this purpose.) Do NOT wait until after the offer is accepted (or rejected) by the seller.

In addition, this rule means that an offer must be immediately presented to a seller even if there is a contract pending on the property. Of course, in this instance, it is essential that the agent also advise the seller that serious legal problems could result from the seller’s acceptance of such offer and that the seller should contact an attorney if he is interested in treating the offer as a “back-up” offer or in attempting to be released from the previously signed contract.

Copies of any signed sales contract or lease must also be promptly delivered to the parties within the three-day period. Clients should be provided a copy of the agency agreement upon signing, since both parties presumably are present, but certainly within three days of receipt by the broker.

Finally, G.S. 93A-6(a)(14) requires a broker to provide his/her client a detailed and accurate closing statement showing the receipt and disbursement of all monies relating to the transaction about which the broker knows or reasonably should know. A broker may rely on a closing statement prepared by an attorney but must review the statement for accuracy.

### **Retention of Records [Rule A.0108]**

Brokers are required to retain records pertaining to their brokerage transactions for three years from the successful or unsuccessful conclusion of the transaction or the disbursement of all trust monies pertaining to that transaction, whichever occurs later. However, if the broker’s agency agreement is terminated prior to the conclusion of the transaction, the broker shall retain transaction records for three years after the agency agreement is terminated or the disbursement of all funds held by or paid to the broker in connection with the transaction, whichever occurs later. Documents that must be retained include sale contracts, leases, offers (even those not accepted), agency contracts, earnest money receipts, trust account records, disclosure documents, closing statements, bro-

ker cooperation agreements, broker price opinions and comparative market analyses (including notes and supporting documentation), advertising, sketches, and any other records relating to a transaction. For example, other records would include vendor invoices, written communications with a tenant or client, and Working with Real Estate Agent Disclosures signed by customers who may not have become clients.

Rule A .0108(d) also requires an individual broker to provide a copy of such records including written agency disclosures, agency agreements, and contracts to the firm or sole proprietorship with which they are affiliated within three days of the broker's receipt of such documents.

### **Brokerage Fees and Compensation [Rules A.0109, A.0120]**

These rule address various issues associated with the disclosure of and sharing of compensation received by a real estate licensee.

**Disclosure to principal of compensation from a vendor or supplier of goods or services.** Paragraph (a) prohibits a licensee from receiving any form of valuable consideration from a vendor or supplier of goods or services in connection with an expenditure made on behalf of the licensee's principal in a real estate transaction without first obtaining the written consent of the principal.

**Example:** A broker manages several rental units for various owners and routinely employs Ajax Cleaning Service to clean the units after the tenants leave. The broker pays Ajax a \$50 per unit fee for its services out of rental proceeds received and deposited in his trust account. Ajax then "refunds" to the broker \$10 for each \$50 fee it receives, but the property owners are not aware that the broker receives this payment from Ajax in addition to his regular brokerage fee. The broker in this situation is making a secret profit without the property owners' knowledge and is violating the rule.

**Disclosure to a party of compensation for recommending, procuring or arranging services for the party.** Paragraph (b) prohibits a licensee from receiving any form of valuable consideration for recommending, procuring, or arranging services for a party to a real estate transaction without full and timely disclosure to such party. The party for whom the services are recommended, procured, or arranged does not have to be the agent's principal.

**Example:** An agent sells a listed lot to a buyer who wants to build a house on the lot. Without the buyer's knowledge, the agent arranges with ABC Homebuilders for ABC to pay the agent a 3% referral fee if the agent recommends ABC to the buyer and the buyer employs ABC to build his house. The agent then recommends ABC to the buyer, ABC builds the buyer's house for \$100,000 and ABC secretly pays the agent \$3,000 for his referral of the buyer. The agent has violated this rule. (Note that the buyer in this situation likely paid \$3,000 more for his house than was necessary because it is very likely the builder

added the agent's referral fee to the price he charged the buyer for building the house. The main point here is that the buyer had the right to know that the agent was not providing disinterested advice when recommending the builder.)

**Example:** A selling agent in a real estate transaction, while acting as a subagent of the seller, recommends to a buyer who has submitted an offer that the buyer apply to Ready Cash Mortgage Company for his mortgage loan. The agent knows that Ready Cash will pay him a "referral fee" of \$100 for sending him the buyer's business if the loan is made to the buyer, but the agent does not disclose this fact to the buyer. If the agent subsequently accepts the referral fee from the lender, he will have violated this rule. (The buyer has the right to know that the agent's recommendation is not a disinterested one.)

**Disclosure to principal of compensation for brokerage services in sales transactions.** Paragraph (c) deals with disclosure to a licensee's principal of the licensee's compensation in a **sales** transaction from various sources other than in situations addressed in paragraphs (a) and (b). A broker may not receive any compensation, incentive, bonus, rebate or other consideration of more than nominal value (1) from his or her principal unless the compensation, etc. is provided for in a written agency contract or (2) from any other party or person unless the broker provides to his or her principal a full and timely disclosure of the compensation.

**Example:** ABC Homebuilders offers to pay any broker who procures a buyer for one of ABC's inventory homes a **bonus** of \$1,000 that is in addition to any brokerage commission the broker earns under any agency contract and/or commission split agreements. Any broker working with a buyer-client who is considering the purchase of one of ABC's homes must comply with the disclosure requirement and disclose the bonus to the buyer in a timely manner. **Note:** If ABC Homebuilders also offers a bonus of \$2,000 on a second sale of one of its homes and \$3,000 on a third sale, and if a buyer's broker has already sold one of ABC's homes, then the broker must disclose to his or her buyer principal the entire bonus program and that his or her bonus will be at least \$2,000 if the buyer purchases an ABC home.

**Nominal compensation.** Compensation is considered to be "nominal" if it is of insignificant, token or merely symbolic worth. The Commission has cited gifts of a \$25 bottle of wine or a \$50 dinner gift certificate as being examples of "nominal" compensation paid to a broker that do not require the consent of the broker's principal.

**Full and timely disclosure.** Paragraph (d) of Rule A.0109 explains what is meant by "full and timely disclosure" in paragraphs (a), (b) and (c). "Full" disclosure includes a description of the compensation, incentive, etc. including its value and the identity of the person or party by whom it will

or may be paid. The disclosure is “timely” when it is made in sufficient time to aid a reasonable person’s decision-making. In a sales transaction, the disclosure may be made orally, but must be confirmed in writing before the principal makes or accepts an offer to buy or sell.

**Restrictions on compensation disclosure requirement.** Paragraph (e) clarifies that a broker does NOT have to disclose to a person who is not his or her principal the compensation the broker expects to receive from his or her principal, and further clarifies that a broker does NOT have to disclose to his principal the compensation the broker expects to receive from the broker’s employing broker/firm (i.e., the individual broker’s share of the compensation paid to the broker’s employing broker/firm).

**Commission will not arbitrate commission disputes.** G.S. 93A-3(c) provides that the Commission shall not make rules or regulations regulating commission, salaries, or fees to be charged by licensees. Paragraph (f) of Rule A.0109 augments that statutory provision by providing that the Commission will not act as a board of arbitration regarding such matters as the rate of commissions, the division of commissions, pay of brokers and similar matters.

**Compensation of unlicensed persons by brokers prohibited.** G.S. 93A-6(a)(9) authorizes the Commission to take disciplinary action against a licensee for paying any person for acts performed in violation of the License Law. Paragraph (g) of Rule A.0109 simply augments this statutory provision by providing an affirmative statement that a licensee shall not in any manner compensate or share compensation with unlicensed persons or entities for acts performed in North Carolina for which a license is required. [Note that NC brokers may split commissions or pay referral fees to licensees of another state so long as the out-of-state licensee does not provide any brokerage services while physically in North Carolina.] One narrow, limited exception to this restriction is provided in Paragraph (h) – licensees may pay referral fees to travel agents who contact them to book vacation rentals only, so long as well-defined procedures are followed.

**RESPA prohibitions control.** Finally, Paragraph (i) of Rule A.0109 provides that nothing in this rule permits a licensee to accept any fee, kickback, etc. that is prohibited by the federal Real Estate Settlement Procedures Act (RESPA) or implementing rules, or to fail to make any disclosure required by that act or rules.

### **Commission Disbursement**

Paragraph (a) of Rule A.0120 bars a licensee from requiring or demanding that an escrow agent or attorney split a broker’s commission or pay all or part to another person or entity. While a licensee may request that the closing attorney disburse payments to third parties, it is a violation of the rule for such licensee to threaten or otherwise force such disbursement. It is the licensee’s duty to ensure such payments are made, not the escrow agent or closing attorney.

Similarly, an affiliated broker must receive a commission or referral fee from their broker-in-charge. An unaffili-

ated broker may receive commission or a referral fee directly from the escrow agent or closing attorney.

### **Broker-In-Charge [Rule A.0110].**

**Requirement to Have a Broker-In-Charge.** Paragraph (a) of Rule A.0110 states the general rule that each real estate firm is required to have a broker designated by the Commission who meets the qualification requirements to serve as “**broker-in-charge**” of the firm’s principal office and a different broker to serve in the same capacity at each branch office. It is important to note, as discussed previously under “License Requirement,” that “**broker-in-charge**” *is not a separate license*, but only a separate license status category. No broker may be broker-in-charge of more than one office location at a time, and no office of a firm shall have more than one designated broker-in-charge. Rule A.0110(a) describes the lone exception in the rare circumstance when two or more firms share the same office space. Note that G .0103 defines the terms “office,” “principal office” and “branch office” – these definitions are not repeated here.

**Exception to BIC Requirement for Certain Firms.** Paragraph (c) of Rule A.0110 provides: A licensed real estate firm is not required to have a BIC if it: (1) has been organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker; (2) is treated for tax purposes as a pass-through business by the U.S. Internal Revenue service; (3) has no principal or branch office; and (4) has no licensed or unlicensed person associated with it other than its qualifying broker.

**Sole Proprietors.** In addition to each firm having to have a broker-in-charge for each office, *most broker-sole proprietors (including sole practitioners) also must be a broker-in-charge.*

Rule A.0110 (b) provides that every **sole proprietorship** shall designate as a broker-in-charge if the sole proprietorship: (1) engages in any transaction where a broker is required to deposit and maintain monies belonging to others in a trust account; (2) engages in advertising or promoting services as a broker in any manner; OR (3) has one or more other brokers affiliated with him or her in the real estate business. Note, however, that maintenance of a trust account by a broker solely for holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not, standing alone, subject the broker to the requirement to be designated as a broker-in-charge.

The most misunderstood of the three broker-in-charge triggering requirements for sole proprietors cited above is # (2): “*...engages in advertising or promoting services as a broker in any manner.*” Acts of a sole proprietor that trigger the BIC requirement under # (2) include, but are not limited to: Placing an advertisement for services as a broker in any form or any medium; distributing business cards indicating they are a real estate broker; orally soliciting the real estate business of others; or listing a property for sale (which inherently involves holding oneself out as a broker and advertising).

Therefore, a broker-sole proprietor may lawfully provide only limited brokerage services without a designated BIC. A couple of examples of permissible brokerage activities by a broker-sole proprietor who is NOT a designated BIC include receiving a referral fee from another broker or brokerage firm for referring business to the broker or firm or representing a relative or friend as a buyer's broker in a sales transaction provided the broker has not solicited the business, has not advertised or promoted his or her services, and does not hold earnest money beyond the time it is required to be deposited in a trust account.

*The practical effect of these requirements is that a broker who will be operating independently in most cases must also designate himself or herself as a BIC.* The real significance of these requirements for a sole proprietor will be better understood when the qualification requirements to serve as a BIC are subsequently discussed.

**Requirements for BIC-Eligible Status.** Paragraph (e) of Rule A .0110 states that, in order for a broker to be designated as a BIC for a sole proprietorship, real estate firm, or branch office, the broker must FIRST have BIC Eligible status. A broker must request BIC Eligible status on a form provided by the Commission.

**The qualifying requirements for BIC Eligible Status, pursuant to paragraph (e) of Rule A .0110, are:**

- Broker license must be on "active" status but NOT on "provisional" status. A provisional broker is ineligible to serve as broker-in-charge, as is a broker whose license is inactive or expired.
- Broker must have at least 2 years of full-time or 4 years of part-time real estate brokerage experience within the previous 5 years or be a North Carolina licensed attorney with a practice that consisted primarily of handling real estate closings and related matters in North Carolina for 3 years immediately preceding application. The requirement is for actual brokerage experience, not just having a license on "active" status. Note that by submission of the request form to the Commission, a broker certifies that he or she possesses the required experience. The Commission may at its discretion require the broker to provide evidence of possessing the required experience.
- After obtaining BIC Eligible status, a broker must complete the Commission's 12-hour Broker-In-Charge Course within 120 days of designation (unless the 12-hour course has been taken within the previous year). Failure to complete this course within 120 days will result in the broker losing BIC Eligible status. The broker must then take the course before he or she may again be granted BIC Eligible status.

**Requesting Designation as Broker-in-Charge (BIC).**

A broker who has BIC Eligible status may request BIC Designation on a form provided by the Commission at any time so long as the broker continuously maintains his/her BIC Eligible status. The broker may also request BIC Eligible sta-

tus and BIC Designation simultaneously.

**Broker-In-Charge (BIC) Duties.** The designated broker-in-charge is the primary person the Commission will hold responsible for the supervision and management of an office. See paragraph (g) of Rule A.0110 for a list of the specific responsibilities of a broker-in-charge.

**Maintaining BIC Eligible Status.** To maintain BIC Eligible status, paragraph (g) of Rule A.0110 requires that a broker must:

- Renew his or her broker license in a timely manner each license year and keep the license on active status at all times.
- Complete each license year the four-hour mandatory Broker-in-Charge Update Course (BICUP) as well as any approved four-hour CE elective.

The broker must begin taking the BICUP course during the same license year of designation, unless the broker completed the General Update (GENUP) course prior to designation.

The BICUP Course satisfies the broker's four-hour mandatory continuing education Update course requirement. If a broker with BIC Eligible status fails to take both the BICUP and one elective CE course by June 10 in any given year when required, then the broker will lose BIC Eligible status, and BIC designation if applicable, the following July 1.

**Termination of BIC Eligible Status and Broker-In-Charge Designation.** Paragraph (i) of Rule A.0110 provides that a broker's BIC Eligible status, and, if currently designated as a BIC, his or her BIC designation, shall be terminated if the broker: made any false statements or presented any false, incomplete, or incorrect information in connection with an application; fails to complete the 12-hour Broker-in-Charge Course pursuant to Paragraph (e) of the Rule; fails to timely renew his or her broker license, or the broker's license has been suspended, revoked, or surrendered; or fails to timely complete the Broker-in-Charge Update Course (BICUP) and a four credit hour elective course in any license year.

**Regaining Lost BIC Eligible Status and BIC Designation.** Pursuant to Rule A .0110(m), once a broker's BIC Eligible status has been terminated, the broker must complete the following steps in the order prescribed to regain the status:

1. The broker must first have a license on active status. If the license has expired, it must first be reinstated. If the license is inactive due to a CE deficiency, then the licensee must first complete whatever CE is necessary to reactivate the license and in either case, must then submit a reactivation form to the Commission requesting that the license be placed back on active status. A broker who has lost his or her BIC Eligible status should not take either the 12-hour BIC Course or the BICUP course prior to officially reactivating his/her license with the Commission.
2. Once back on active status, the broker must possess

the experience required for initial designation and must first complete the 12-hour BIC Course prior to requesting BIC Eligible status and re-designation as a BIC regardless of when the broker may have previously taken the 12-hour course. There are no exceptions to this requirement to retake the 12-hour course prior to re-designation.

**Notice to Commission When BIC Status Ends.** A BIC must notify the Commission in writing within 10 days upon ceasing to serve as BIC of a particular office. [See Paragraph (g).]

**Exception for certain pass-through businesses.** See Paragraph (c).

**Nonresidents.** Nonresident individuals and firms holding a NC broker and/or firm license and engaging in brokerage activity in NC are subject to the same requirements as NC resident brokers/firms with regard to when they must have a designated broker-in-charge. Thus, a nonresident company engaging in brokerage in NC must have a broker-in-charge of the company who holds an active NC broker license for purposes of its NC business, although the office need not be physically located in North Carolina. Similarly, a nonresident NC broker sole practitioner engaging in activity that triggers the broker-in-charge requirement for a resident NC broker sole practitioner (see previous discussion on this subject) also must be designated as a broker-in-charge for NC brokerage purposes as without a BIC, a company has no office anywhere.

**Education Exception for Certain Nonresident NC Brokers-In-Charge:** A nonresident NC broker who has attained BIC Eligible status and been designated as the broker-in-charge of an office NOT located in NC and who has no office, primary residence or mailing address in North Carolina is NOT required to complete four-hour mandatory Broker-in-Charge Update (BICUP) Course to maintain BIC Eligible status. [See Rule 58A .1711.] However, a nonresident broker who has attained BIC-Eligible status IS REQUIRED to complete the 12-hour BIC Course pursuant to paragraph (e) of Rule A .0110.

**Drafting Legal Instruments [Rule A.0111]**

This rule prohibits licensees from drafting legal instruments, e.g., contracts, deeds, deeds of trust, etc., but does allow them to fill in the blanks on preprinted sales or lease contract forms, which is not construed to be the unauthorized practice of law.

**Offers and Sales Contracts [Rule A.0112]**

This rule specifies what minimum terms must be contained in any preprinted offer or sales contract form a licensee, acting as an agent, proposes for use by a party in a real estate transaction.

**Reporting Criminal Convictions [Rule A.0113]**

Licensees are required to report to the Commission any criminal convictions for a felony or misdemeanor, any disciplinary action taken against them by any other occupational licensing board, or any restriction, suspension or revocation

of a notarial commission within sixty (60) days of the final judgment or order in the case. This reporting requirement is ongoing in nature. *Note that Driving While Impaired (DWI) is a misdemeanor and must be reported!*

**Residential Property and Owners' Association Disclosure Statement [Rule A.0114]**

State law (Chapter 47E of the General Statutes) requires that most residential property owners complete a disclosure form to give to prospective purchasers. The form seeks to elicit information about the condition of the property by asking various questions, to which owners may answer "yes," "no," or "no representation." Failure to provide a buyer with this form may allow the buyer to cancel the contract by notifying the seller in writing within three calendar days of contract acceptance.

**Note:** Licensees in residential real estate transactions have a duty under G.S. 47E-8 to inform their clients of the client's rights and obligations under the statute. The Real Estate Commission also views the Real Estate License Law as imposing on licensees working with sellers and buyers certain additional responsibilities to ensure statutory compliance and serve their clients' interests. Licensees are expected to "assist" sellers with completion of the form but should not complete the form for a seller or advise a seller as to what representation (or No Representation) to make. That being said, licensees should be certain to advise sellers that the licensee is obligated by law to disclose all material facts about or relating to the seller's property to prospective buyers regardless of what representation the seller makes on the disclosure form. The licensee should also review the seller's completed disclosure statement for accuracy and completeness. See the Commission's *North Carolina Real Estate Manual* for a full discussion of the disclosure law and an agent's duties.

Sellers must also provide a Mineral and Oil and Gas Mandatory Disclosure Statement (MOGS) to buyers prior to making an offer to purchase and contract. The form has been developed by the Real Estate Commission and is available for download from the Commission's website, [www.ncrec.gov](http://www.ncrec.gov). It is a separate form and is in addition to the Residential Property and Owner's Association Statement. A disclosure statement is not required for some transaction. For a complete list of exemptions, see G.S. 47E-2.

**Broker's Responsibility for Closing Statements [G.S. 93A-6(a)(14)]**

*The cited statute requires a broker, "...at the time a sales transaction is consummated, to deliver to the broker's client a detailed and accurate closing statement showing the receipt and disbursement of all monies relating to the transaction about which the broker knows or reasonably should know."* The statute goes on to provide that if a closing statement is prepared by an attorney or lawful settlement agent, a broker may rely on the delivery of that statement, but *the broker must review the statement for accuracy and notify all parties to the closing of any errors.* Since virtually every residential transaction in

North Carolina is closed by an attorney (or lawful settlement agent), it is standard practice for brokers to adopt the attorney's settlement statement to satisfy this License Law requirement.

**Commission Guidelines.** A settlement statement is a detailed report of all monies received and disbursed by the settlement agent in connection with a real estate sales transaction. It is essential that the settlement statement be accurate and that a copy be provided to each party. The settlement statement is prepared by the settlement agent – the individual conducting the closing, which in North Carolina is almost always the closing attorney or a nonlawyer assistant working under the supervision of the closing attorney.

The TRID (Tila-RESPA Integrated Disclosures) rule became effective October 3, 2015, and applied to loan applications received on or after October 3, 2015. The TRID rule replaced the HUD-1 settlement statement (RESPA) and final Truth-in-Lending statement (TILA) with two Closing Disclosure (CD) documents, one for the borrower and a separate one for the seller. Closing disclosures are disclosures only and are not equivalent to a settlement statement. While the HUD-1 is no longer used in TRID-governed transactions, other types of settlement statements may be used, such as settlement/closing statements created and published by the American Land Title Association (ALTA). Also, the HUD-1 may be used as the settlement statement in non-TRID-governed transactions, such as cash transactions, construction loans, or purchases of investment property.

The Commission has published in its North Carolina Real Estate Manual the following guidelines regarding brokers' responsibilities for settlement statements:

- A broker must confirm the accuracy of all entries about which s/he has direct knowledge. Such items include, but may not be limited to: the sale price; amount of the due diligence fee and earnest money deposit; amount of the brokerage commission and split; any amounts due either party under the offer to purchase and contract, e.g., closing costs paid by seller, as well as any sums paid by or due to third parties related to the transaction, if the broker knows or should know about the expense.
- As to amounts paid by or due to third parties, brokers generally may assume that the amounts for charges and fees as stated on the settlement statement are correct unless there is something that would lead a reasonable broker to suspect that an amount is incorrect. As to all debits and credits related to the transaction, whether paid before or at closing, the broker must:
  - 1) review and confirm that all charges and credits have been properly debited or credited to the seller or buyer and are entered in the correct column; and
  - 2) review and confirm the accuracy of the calculations

for all prorated items, escrow reserves, interim interest, excise tax and the "bottom line figures," i.e., total settlement charges to each party, cash from borrower-buyer, and cash to seller.

- If a broker is aware of any expense related to the transaction paid to or by either party or any third party that is not included on the settlement statement, the broker must notify both the settlement agent and the lender of the omission, as the settlement statement should reflect all expenses and payments related to the transaction, not just monies the settlement agent disburses.
- A broker should notify the settlement agent if the broker believes there are any errors or omissions on the statement.

## HANDLING TRUST FUNDS

This section addresses those aspects of handling trust funds that are taught in the Real Estate Broker Prelicensing Course and tested on the real estate license examination for entry-level brokers. All brokers are encouraged to take the Basic Trust Account course for a fuller treatment of this subject. The Basic Trust Account course is an online, self-paced course and registration is available on the Commission's website at [www.ncrec.gov](http://www.ncrec.gov).

### Definition of Trust Money

In the context of real estate transactions, "**trust money**" is most easily defined as *money belonging to others received by a real estate broker who is acting as an agent in a real estate transaction. It is also any money held by a licensee who acts as the temporary custodian of funds belonging to others.* Such money must be held in trust even if the circumstances are only collateral to the licensee's role as an agent in a real estate related matter, e.g., a listing agent receives monies from his out of town seller for yard maintenance while the property is being marketed. The most common examples of trust money are:

- Earnest money deposits
- Down payments
- Tenant security deposits
- Rents
- Homeowner association dues and assessments, and
- Money received from final settlements

In the case of resort and other short-term rentals, trust money also includes:

- Advance reservation deposits
- State (and local, if applicable) sales taxes on the gross receipts from such rentals

**Trust or Escrow Account** [G.S. 93A-6(a)(12) & (g); 93A-45(c); Rule A.0116, .0117]

One of the most basic tenets of broker accountability when handling trust money is that it must be deposited into a trust or escrow account as described below. A "trust account" or "escrow account" (the terms are synonymous for Commission purposes) is simply a bank account into which

trust money (and *only* trust money) is deposited. The three primary features of a trust or escrow account are that it is:

- 1) **separate**, containing only monies belonging to others,
- 2) **custodial**, meaning *only the broker or the broker's designated employee has disbursement control over the account*, but no one who has funds in the account has that ability, *and*
- 3) **available on demand**, that is, the funds may be withdrawn at any time without prior notice.

**Type and Location of Trust Account.** A broker's trust account or escrow account must be:

- 1) a demand deposit account
- 2) in a federally insured depository institution
- 3) lawfully doing business in North Carolina
- 4) that agrees to make the account records available for inspection by Commission representatives. [G.S. 93A-6(g)]

Thus, for the purpose of holding most trust money, the bank can be located outside North Carolina if the foregoing conditions are met.

**Designation of Trust Account and FDIC Insurance.** A broker-in-charge who must maintain a trust account must ensure that the bank properly designates the account and that the words "trust account" or "escrow account" appear on all signature cards, bank statements, deposit tickets and checks. Even though the escrow account typically is in the name of the company or broker, so long as the broker properly designates the account as a "trust" or "escrow" account and keeps accurate records that identify each owner of the funds and/or depositor (buyer, seller, lessor, lessee, etc.), the depositors are protected from the funds being "frozen" or attached if the broker/trustee becomes insolvent, incapacitated, dies, has tax liens, becomes involved in a lawsuit, etc. Failure to properly designate an account titled in the name of the company/broker as a trust or escrow account may result in attachment of the account by others to collect a judgment or denial of FDIC insurance coverage as to each individual's interest in the account.

So long as the account is properly designated as a trust/escrow account, *all deposits are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000 per each individual for whom funds are held*. Thus, a broker's trust account may contain \$500,000 total, but *all funds are fully insured so long as no one individual's interest in the account exceeds \$250,000*. (**Note**, however, that an individual still may be underinsured if the individual maintains accounts in his/her individual name at the same financial institution as the broker's trust/escrow account.)

**When a Trust Account Is Required.** A broker must open and maintain a trust account when the broker or any affiliated licensee takes possession of trust money. A broker who is inactive or otherwise not using his/her real estate license is not required to open or maintain a trust account because s/he should not be engaged in brokerage nor receiving mon-

ies belonging to others. Similarly, if an *active* practicing broker does not collect or otherwise handle the funds of others, no trust account is required. Note: A broker who leases residential property he or she owns to tenants may be required to maintain a trust account under 42-50 NC Residential Landlord Tenant law.

**Number of Trust Accounts.** Except for brokers who are managing homeowner or property owner association funds, a broker holding trust money is only required to have one trust account. All earnest money deposits, tenant security deposits, rents, and other trust monies may be deposited into this one common trust account. However, brokers who are active in both sales and property management often find it helpful to use more than one trust account. For example, they may wish to keep a "general sales trust account" for earnest money deposits, settlement proceeds, etc., and a "rental trust account" for tenant security deposits, rents, and related receipts. Although it is not required, many brokers involved in property management and leasing elect to maintain an additional "security deposit trust account" to keep tenant security deposits separate from rents and other related receipts. However, **Rule A.0118(a)** requires brokers who handle homeowner or property owner association funds to maintain a *separate trust account for each property owner association or homeowner association they manage*. The funds of one homeowner association are not to be commingled with funds from any other association nor with any general trust monies. The broker also must provide the association with periodic written statements not less than once each quarter reporting all monies received, disbursed, and due, but not paid (i.e., delinquent), as well as the balance of funds in the account.

**"Commingling" Prohibited.** [G.S. 93A-6(a)(12)] The basic statutory provision relating to a licensee's handling of the money or property of others states that a broker may not "commingle" his or her own money or property with the money or property of others. This means that a broker may not maintain funds belonging to others in the same bank account that contains his or her personal or business funds. Funds belonging to others must be held in a trust account and, except as described below regarding "bank service charges on trust accounts," a broker may not deposit his or her own funds in that trust account. The prohibition against commingling also means, for example, that a broker who has an ownership interest in property is precluded from depositing monies (e.g., earnest money, rent, security deposits, etc.) related to that property in his brokerage trust account.

**Bank Service Charges on Trust Accounts.** Trust accounts usually are subject to the same service charges as regular checking accounts. Whenever possible, brokers should arrange for the depository/bank either to bill the broker for these expenses or charge these expenses to the broker's personal or general operating account. However, if such arrangements cannot be made, the Commission will per-

mit a broker to deposit and maintain in his trust account a maximum of \$100.00 of his personal funds (or such other amount as may be required) to cover (not avoid) such charges. So, if a broker's monthly service charges and other fees typically are \$100, then the broker may deposit up to \$200 of his/her own money to *cover* these charges. A broker who deposits any of his/her own money in the trust account to cover bank charges must be careful to properly enter and identify these personal funds in his/her trust account records by use of a personal funds ledger. While this technically constitutes "commingling," it is permissible commingling to avoid the greater evil of using other people's money to pay these bank charges.

**Interest-Bearing Trust Account.** Both G. S. 93A-6(a) (12) and Rule A.0116(c) permit a broker to deposit trust money into an interest-bearing trust account so long as the broker first obtains written authorization for deposit in an interest-bearing account from all parties having an interest in the monies being held. Such authorization must specify how and to whom the interest will be paid. If the authorization is contained in an offer, contract, lease or other transaction instrument, it must be set forth in a conspicuous manner that distinguishes it from other provisions of the instrument. Remember, however, that all trust accounts must be a *demand account*, so investment of trust monies in any type of security, such as a government bond or a fixed term certificate of deposit, is prohibited.

**Broker-In-Charge Responsible for Trust Accounts.** [Rule A.0117; Rule A.0110(g)(4)] Rule A.0117(a) requires a broker to maintain complete records showing the deposit, maintenance and withdrawal of money belonging to the broker's principals or *held in escrow or in trust for the broker's principals*. Paragraph (h) of that rule also provides that the Commission may inspect trust account records periodically without prior notice and whenever the records are pertinent to investigation of a complaint against a licensee. Rule A.0110(g)(4) refines this requirement by specifying that a **broker-in-charge (BIC)** *is responsible for the proper maintenance of real estate trust accounts and records pertaining thereto*.

**Custodian of Trust Account Records Other Than the Broker-In-Charge.** While a broker-in-charge may transfer possession of trust money to a bookkeeper, secretary, or some other clerical employee to record and deposit the funds in a trust account and to maintain trust account records, the broker-in-charge nonetheless remains responsible for the care and custody of such funds. Brokers-in-charge should closely and diligently supervise the acts of all persons having access to the trust account, since final accountability for the accuracy and integrity of the account rests with the broker-in-charge. *Access to trust money should be limited and carefully controlled.*

**Disbursement of Earnest Money** [Rule A.0116(e)] This rule permits a broker-in-charge to transfer an earnest money deposit from his/her trust account to the closing attorney or other settlement agent not more than ten (10) days prior

to the anticipated settlement date. Earnest money may **not** be disbursed prior to settlement for any other purpose without the written consent of the parties. Thus, earnest money may not be used by the broker to pay for inspection reports or other services on behalf of the buyer prior to settlement without the written consent of the seller, and vice-versa.

**Disputed Trust Funds.** Rule A.0116(d) addresses disputed trust funds as follows: "In the event of a dispute between buyer and seller or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a broker, the broker shall retain said deposit in a trust or escrow account until the broker has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction." The rule also references the G.S. 93A-12 procedures for depositing disputed funds with the Clerk of Court as well as when one party abandons his or her claim to the disputed funds. However, these procedures are beyond the scope of these materials and are more important for brokers-in-charge to know.

**Handling of Trust Money** [Rule A.0116(a), (b) & (g)]

The **general rule** is that all trust monies received by a licensee must be deposited in a trust account **within three banking days of receipt**. **Exception: Earnest money** received with offers to purchase and **tenant security deposits** in connection with leases must be deposited in a trust account *not later than three banking days following acceptance of the offer to purchase or lease agreement unless* the deposit is tendered in **cash** in which event it must be deposited within **three banking days following receipt, even if the contract or lease has not been accepted**. In part, this is because cash is immediately available and may be refunded within a day of deposit, unlike checks which may require a few days to clear.

Understand that a broker *may* choose to immediately deposit a check received for an earnest money deposit or tenant security deposit and is *not required* to wait until contract acceptance unless so instructed by the buyer/tenant. Of course, early deposit may cause problems if the offer to purchase or lease is not accepted and the prospective buyer or tenant understandably wants their deposit to be immediately returned. The date of acceptance should be shown in the purchase or lease agreement to determine when the three banking days begins.

**Receipt of Trust Money by Provisional Broker.** [Rule A.0116(b)(1)&(2), Rule A.1808.] *All trust money received by a provisional broker must be delivered immediately to the provisional broker's broker-in-charge.* In other words, provisional brokers may not retain or hold trust money any longer than absolutely necessary to deliver the trust money to his/her broker-in-charge. Similarly, trust monies received by a **nonresident limited commercial broker** are to be delivered immediately to and held by the resident North Carolina broker with whom the nonresident is affiliated. Brokers-in-charge should have written policies that clearly state the procedures to be followed when *any agent* affiliated with the company, whether a provisional or non-provisional broker, receives trust monies.

**Handling Option Money and Due Diligence Fee.** Rule A.0116(b)(4) states in part: “A broker may accept custody of a **check or other negotiable instrument made payable to the seller** of real property as payment for an **option or due diligence fee**, but only for the purpose of delivering the instrument to the seller. While the instrument is in the custody of the broker, the broker shall, according to the instructions of the buyer, either deliver it to the seller or return it to the buyer. The broker shall safeguard the instrument and shall be responsible to the parties on the instrument for its safe delivery as required by this Rule. A broker shall not retain such an instrument for more than three business days after the acceptance of the option or other sales contract.”

The rule is basically self-explanatory. In the rule, “custody” means possession. Recall that option money or a due diligence fee is paid directly to the seller, to whom the check is written as payee, and so it is not appropriate for a broker to deposit these checks into his/her trust account because the check is not payable to the broker or real estate company as is the case with earnest money checks. Either the listing agent or buyer’s agent may hold the check or negotiable instrument until negotiations are completed and a contract is formed, at which point the check should be delivered to the seller as soon as possible.

If, however, a buyer for some reason gives a broker *cash for the option money or due diligence fee*, then the broker must *immediately deposit the cash in his/her trust account* pending contract formation as *cash must always be deposited into a trust account within three banking days of receipt — no exceptions*. If the parties enter into a contract, then the broker would write a check from the trust account payable to the seller, noting in the memo section and trust account records that it is for the option fee or due diligence fee from the buyer.

**Safeguarding Trust Money; Improper Use of Trust Money.** [Rule A.0116(g)] This rule places on *every licensee* the responsibility to safeguard the money or property of others coming into his or her possession according to the requirements of the License Law and Commission rules. In addition, it states that: “A broker shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was intended or permit or assist any other person in the conversion or misapplication of such money or property.”

## **BROKER PRICE OPINION AND COMPARATIVE MARKET ANALYSIS**

[G.S. 93A, Article 6; Commission Rules Chapter 58A, Section .2200]

**Definitions.** General Statute §93A-82 of the North Carolina Real Estate License Law and General Statute §93E-1-4(7c) of the North Carolina Appraisers Act both define a “**broker price opinion**” (“BPO”) and a “**comparative market analysis**” (“CMA”) as “...an estimate prepared by a licensed real estate broker that details the probable selling price or leasing price of a particular parcel of or interest

in property and provides a varying level of detail about the property’s condition, market, and neighborhood, and information on comparable properties, but does not include an automated valuation model.” Thus, *the terms “BPO” and “CMA” have exactly the same legal meaning* even though an estimate provided for a seller or buyer client or prospective client is most commonly referred to as a CMA and an estimate performed for a third party for a purpose other than mortgage loan origination (for example, a foreclosure or short sale decision) is typically referred to as a BPO.

- A “non-provisional” broker with a current license on “active” status may prepare a broker price opinion (BPO) or comparative market analysis (CMA) for a fee for a variety of persons and entities for a variety of reasons, not just for actual or prospective brokerage clients. Note, however, that a provisional broker may NOT perform a BPO or CMA for a fee for anyone. [G.S. §93A-83(a) and (b)]
- A broker may **NOT** prepare a BPO (or CMA) for an existing or potential lienholder or other third party where the BPO is to serve as the basis to determine the **value** of a property *for the purpose of originating a mortgage loan*, including first and second mortgages, refinances or equity lines of credit. [G.S. §93A-83(b)(6)]
- A BPO or CMA may only estimate the “*probable selling price*” or “*probable leasing price*” of a property, not the “value” of a property. Moreover, if a BPO or CMA does propose to estimate the “value” or “worth” of a property, it shall be legally considered a “real estate appraisal” that may only be prepared by a licensed or certified real estate appraiser, not by a real estate broker. [G.S. §93A-83(f)]
- A BPO or CMA provided *for a fee* must be performed in accordance with the requirements of Article 6 of the Real Estate License Law and standards set forth in rules adopted by the North Carolina Real Estate Commission. [Rules, Ch. 58, Section A.2200]
- A BPO or CMA must be *in writing* and must address those matters specifically required by the statute or Commission rule. [G.S. §93A-83(c)]

**Standards for BPOs and CMAs Performed for Compensation.** Article 6 of the Real Estate License Law provides a number of standards that must be followed when a broker is performing a BPO/CMA for a fee. Additionally, the Commission has adopted rules (Section A.2200) setting forth specific standards for brokers when performing such standards. A broker performing a BPO/CMA utilizes the same valuation concepts and methodology as an appraiser performing an appraisal; however, the analysis associated with a BPO/CMA is less comprehensive and detailed than with an appraisal, and the regulatory standards for brokers performing BPOs/CMAs are less stringent than those required for real estate appraisers performing appraisals. [See G.S. 93A-83 and especially Commission Rule 58A.2202.]

**Reporting Probable Selling/Leasing Price as a “Range.”** In recognition of the fact that brokers performing BPOs/CMAAs are not expected to be as precise in their analysis and adjustments to comparable properties as an appraiser when performing an appraisal, the Commission’s rules permit reporting in a BPO/CMA of probable selling price or leasing price (lease rate) as either a single figure or as a **price range**. The applicable rules also states: “When the estimate states a price range and the higher figure exceeds the lower figure by more than ten (10%), the broker shall include an explanation as to why the variance is more than 10 percent. [Rule A.2202(h)]

**Use of Income Analysis Methodology Now Required Where Appropriate.** The revised statutes eliminated the old Appraisers Act restriction that a broker’s CMA for actual or prospective clients *and for compensation* was permitted only if the sales comparison approach was the only method used to derive an indication of the probable sales price. A broker performing a BPO or CMA to determine an estimated “probable selling price or leasing price” is now required to utilize methods involving the analysis of income where appropriate (i.e., income capitalization or gross rent multiplier methodology for income-producing properties) as well as the sales comparison method. [G.S. §93A-83(c)(3) and Commission Rule A.2202(e)]

**Competence to Perform BPO/CMA.** Although Article 6 of the License Law and Section A.2200 of the Commission’s rules do not specifically require a broker to perform a BPO/CMA in **competent** manner, the reader should remember that the License Law has always made incompetence a basis for disciplinary action and those provisions also apply to the performance of BPOs and CMAAs. If a broker is not qualified by way of education and experience to properly utilize the appropriate methodology required for a particular property (for example, income capitalization for a commercial property), then the broker is expected to decline the assignment.

**CMAAs/BPOs Performed for NO FEE.** Any broker (*non-provisional or provisional*) has always been permitted to perform a BPO/CMA for any party when NO FEE is charged, and this continues to be the case under the revised law and rules. Note that *the Commission does not consider compensation of a broker for general brokerage services under a brokerage agreement to constitute a “fee” under Article 6 of N.C.G.S. §93A.* “General brokerage services” means services provided under a brokerage agreement to property owners in connection with listing/selling/leasing property and to prospective buyers or tenants in connection with purchasing or leasing a property. Such services include the provision by a licensee of a CMA or BPO. Similarly, the possibility of entering into a brokerage agreement (and earning a brokerage fee) does not constitute a “fee” when a licensee performs a CMA/BPO for a *prospective* client without charging a fee for the CMA/BPO. *It is important for licensees to remember, however, that the Commission expects every CMA/BPO per-*

*formed by a licensee to be performed in a competent manner and without any undisclosed conflict of interest, even if no fee is received for the CMA/BPO. Thus, as a practical matter, a licensee performing a CMA/BPO for no fee should still look to the standards described in Commission Rule 58A .2202 for guidance regarding the proper performance of a CMA/BPO.*

**For a full explanation of the law and rules governing BPOs and CMAAs, and a Sales Comparison Analysis Illustration, the reader is referred to the Commission’s *North Carolina Real Estate Manual*, which may be ordered through the Commission’s website at [www.ncrec.gov](http://www.ncrec.gov).**

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